

ATTACHMENT B

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CLEAN AIR ACT PROGRAMS REVIEW

I. EXECUTIVE SUMMARY

A. INTRODUCTION

The United States Environmental Protection Agency, Region 5 (U.S. EPA) received a petition from four Ohio environmental groups which, as amended and supplemented, asks U.S. EPA to withdraw its approval or delegation of five Ohio Clean Air Act (CAA) programs from the Ohio Environmental Protection Agency (Ohio EPA):

- C the Title V permitting program (Title V)
- C the New Source Review (NSR) program
- C the Prevention of Significant Deterioration (PSD) program
- C the Performance Standards for New Stationary Sources (NSPS) program, and
- C the Noncompliance Penalty program

U.S. EPA conducted independent reviews of Ohio's air permitting and enforcement programs and made public a preliminary report on September 4, 2001. The report, dated August 30, 2001, and entitled "Draft Report on U.S. EPA Review of Ohio Environmental Programs" (Draft Report), applied the withdrawal criteria of the CAA programs to the preliminary findings.

Where

U.S. EPA identified concerns in its preliminary findings, it recommended that Ohio EPA take corrective action.

U.S. EPA solicited comments on the Draft Report, and held two public meetings to receive comments and respond to questions. In addition, U.S. EPA met with Ohio EPA to discuss the report, Ohio EPA's comments, and potential corrective actions or changes to Ohio EPA's procedures. Based on an assessment of the additional information, many of U.S. EPA's final findings are different from the preliminary findings.

B. PETITIONERS' CONCERNS

After careful review of the supplemented petition, the U.S. EPA air enforcement and permitting reviewers identified the following allegations raised by the petitioners:

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1. Enforcement

1. Ohio EPA has failed to inspect and monitor activities subject to regulation.
2. Ohio EPA has failed to take enforcement action and responds slowly when enforcement is needed.
3. Ohio EPA has failed to seek adequate penalties.
4. Ohio EPA has failed to apply major stationary source requirements.
5. Ohio EPA has failed to identify sources subject to Maximum Achievable Control Technology (MACT) standards.
6. Ohio EPA has failed to verify the truth and accuracy of representations made by regulated entities.
7. Ohio EPA has failed to properly apply environmental regulations.
8. The audit privilege law prevents Ohio EPA and local agency access to information needed to document violations.
9. Ohio EPA is hostile to citizens.
10. Ohio EPA excludes citizens from discussions between it and regulated entities.
11. Ohio EPA subjects citizens seeking access to records to excessive copying charges.
12. Ohio EPA accepts company representations as true while subjecting citizen complaints to complex procedures which reduce the likelihood a complaint will be investigated or verified.
13. The audit privilege law denies citizens access to information because Ohio EPA does not get the information from companies.
14. Ohio EPA excludes citizens from having input into the enforcement process.

2. Permitting

1. Ohio EPA has failed to correctly determine a facility's status as a major stationary source in nonattainment or PSD areas for purposes of Title V applicability.

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2. Ohio EPA has allowed construction of sources without a permit.
3. Ohio EPA has failed to permit sources in a timely manner.
4. Ohio EPA has failed to require Lowest Achievable Emission Rate (LAER) and offset reductions.
5. Ohio EPA has failed to correctly determine a facility's Hazardous Air Pollutant (HAP) emissions for purposes of Title V applicability.
6. Ohio EPA has failed to be responsive to citizens or to make necessary information publicly available.
7. Ohio EPA has failed to collect appropriate permitting fees under Title V.

C. WITHDRAWAL PROCEDURES

Each of the federal CAA programs that Ohio is authorized to administer has legal criteria and standards for approval or delegation, as well as for withdrawal, revocation, or other consequences for program or implementation inadequacies.

- C Title V permitting program - Following the procedures for issuing a notice of deficiency, the Administrator can withdraw the program from Ohio or apply other CAA prescribed sanctions if she finds program or implementation inadequacies.
- C NSR and PSD SIP programs - The Administrator must follow the procedures laid out in the CAA for SIP inadequacies or for failure to implement a SIP. Consequences include the possible imposition of sanctions as well as potential disapproval of Ohio's SIP.
- C Delegated NSPS program - The Regional Administrator can revoke the delegation in whole or in part for failure to adequately implement the program.
- C Noncompliance penalty program - Because U.S. EPA has not delegated the federal noncompliance penalty program to Ohio, U.S. EPA cannot withdraw or revoke it.

D. EVALUATION - SUMMARY OF MOST SIGNIFICANT FINDINGS RELATED TO WITHDRAWAL CRITERIA

After investigating the petitioners' concerns, U.S. EPA made preliminary findings regarding Ohio's PSD, NSPS, NESHAP, NSR, and Title V programs. U.S. EPA indicated that if certain findings were confirmed upon further investigation and Ohio EPA did not address the concerns,

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the findings might provide a basis for initiating withdrawal or revocation proceedings for one or more of these programs.¹

In its review of the public comments submitted on the Draft Report, U.S. EPA found certain Ohio EPA comments and commitments were cause for changing many of the preliminary findings.² The most significant and relevant findings in this report are summarized below.

1. Enforcement - Most Significant and Relevant Findings

- Preliminary Findings - Ohio EPA currently employs fewer employees than it had indicated it would need to run its air programs.

Final Findings - The data U.S. EPA relied upon did not account for local agency employees who carry out many of the air enforcement duties in Ohio. The number of employees at Ohio EPA and local agencies assigned to air programs is not significantly different than the number Ohio EPA stated it would need to run its air programs.

- Preliminary Findings - There has been a decline in recent years in Ohio EPA air inspections, enforcement case conclusions, complaint investigations and collected penalty amounts. In addition, the file records U.S. EPA reviewed did not show that Ohio is routinely conducting level 2 inspections of all facilities.

Final Findings - Ohio EPA and U.S. EPA have spent considerable time reconciling data on the number of air inspections conducted in Ohio. Inspection numbers reported by Ohio after the issuance of the Draft Report show that substantially more inspections occurred than reported in the Draft Report. Although the trend in the number of inspections was generally downward between 1996 and 1999, more recent data received from Ohio EPA indicate that inspections increased between 1999 and 2000. Moreover, Ohio EPA's current inspection projections are consistent with minimum inspection frequencies recommended in U.S. EPA's compliance monitoring strategy.

With regard to level 2 inspections, U.S. EPA's preliminary finding stands. Ohio EPA was unable to demonstrate clearly that level 2 inspections were consistently performed or documented. However, in its FY 2003 air grant application, Ohio EPA committed to an inspection program focusing on the use of inspections known as full compliance evaluations, which are more comprehensive than level 2 inspections.

¹ For ease of reference in this report, U.S. EPA refers to "initiate withdrawal or revocation proceedings" simply as "initiate withdrawal proceedings."

² See Section IV of this report for a detailed discussion of the preliminary and final findings.

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By the end of 2001, Ohio EPA reported it had resolved all but one of its administrative CAA cases that would have been two years old in December 2001. U.S. EPA expects that Ohio EPA's planned enforcement reorganization will lead to faster case resolutions.

As noted in the Draft Report, it is difficult to draw broad conclusions from penalty data alone. Recent penalty data indicate that, after a decline in total penalties in calendar year 2000 (in most categories), there was a substantial increase in administrative penalties in 2001 and an increase in total penalties assessed by the Ohio EPA and the Ohio Attorney General's Office combined.

- Preliminary Findings - There are potential gaps in Ohio EPA's legal authority to implement portions of the delegated NSPS and NESHAPs programs.

Final Findings - Ohio EPA proposed revisions to its state asbestos NESHAPs regulations to align them with the federal regulations. U.S. EPA will address Ohio EPA's lack of enforcement authority for the residential wood heater NESHAP when it revises the Ohio NESHAP delegation agreement later this year.

- Preliminary Findings - Ohio EPA has no comprehensive system or process for identifying PSD sources that have not identified themselves to Ohio EPA.

Final Findings - Ohio EPA noted a number of activities it uses to identify sources subject to PSD requirements. Further, Ohio EPA has committed to improve its inspection form and instructions for its inspectors to provide a more explicit system to identify undetected PSD sources. It is also developing PSD guidance for inspectors, and is providing NSR training courses. In addition, in its FY 2003 air grant application, Ohio EPA committed to an inspection program focusing on the use of more thorough inspections known as full compliance evaluations.

- Preliminary Findings - Ohio EPA does not have procedures to check the accuracy of statements made by regulated entities.

Final Findings - Ohio EPA developed and implemented a checklist for reviewing certain reports submitted by companies that have Title V permits. Ohio EPA also committed to implement full compliance evaluations which U.S. EPA expects will help verify the accuracy of some statements made by companies. Ohio EPA commits to use a revised inspection form which focuses more on activities that verify the accuracy of reports that companies have submitted to Ohio EPA.

- Preliminary Findings - Ohio EPA does not have a training program that ensures a minimal level of training and consistency across the state.

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Final Findings - Ohio EPA solicited comments on a draft description of the minimum training curriculum for new entry level employees. After Ohio EPA finalizes the training curriculum, Ohio EPA will require its central and field offices to implement the curriculum. In addition, Ohio EPA has implemented a basic NSR training course for its staff, and is developing an advanced NSR training course planned to be held this year.

- Preliminary Findings - Ohio EPA has not provided its criteria for monitoring source compliance (inspection strategy) as part of its Title V program application.

Final Findings - At present, Ohio EPA has not submitted its criteria for monitoring source compliance as part of its Title V program. It should be noted, however, that Ohio EPA is implementing an acceptable compliance monitoring strategy, which will address full compliance evaluations for Title V facilities, as described in its FY 2003 grant workplan.

- Preliminary Findings - Ohio EPA's Division of Air Pollution Control currently has a very high level of vacancies with no system in place to expeditiously fill those vacancies.

Final Findings - U.S. EPA agrees with Ohio EPA that vacancy rates alone do not show whether the agency has sufficient experienced staff. U.S. EPA finds that vacancy rates alone are not an accurate measure of program effectiveness for purposes of reviewing Ohio EPA's program against the CAA withdrawal criteria.

2. Permitting - Most Significant and Relevant Findings

- C Preliminary Findings - Ohio EPA did not issue all Title V permits by October 1, 1998.

Final Findings - On March 15, 2002, Ohio EPA committed in writing to a schedule to issue all permits by September 1, 2003. U.S. EPA's cited this schedule and commitment in a May 22, 2002 letter responding to citizen comments on Ohio EPA's Title V program. The Ohio Public Interest Research Group (Ohio PIRG) filed a petition for review of the May 22, 2002 letter in the United States Court of Appeals for the Sixth Circuit. In light of the pending litigation, U.S. EPA is not making a final finding on permit issuance in this report.

- C Preliminary Findings - U.S. EPA raised several issues on Ohio EPA's draft Title V permits that, if unresolved, would result in U.S. EPA objecting to the permits. These concerns include the federal legal status of superseded construction permits, Ohio's assertion that Best Available Technology (BAT) regulations are state-enforceable only, and the lack of a statement of basis in many Title V permits.

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Final Findings - Since U.S. EPA raised the issue of superseded construction permits, U.S. EPA has not identified any Ohio EPA draft Title V permit which contains language that the permit superseded or replaced specific Permit To Install (PTI) conditions. As for the (BAT) and lack of adequate statement of basis issues, U.S. EPA addressed these issues in the May 22, 2002 letter responding to citizen comments on Ohio EPA's Title V program. Ohio PIRG filed a petition for review of that letter. In light of the pending litigation, U.S. EPA is not making any final findings on these issues in this report.

- C Preliminary Findings - U.S. EPA is concerned with the adequacy of the statements of basis provided to U.S. EPA with draft Title V permits.

Final Findings - U.S. EPA addressed the adequacy of Ohio EPA's statements of basis in a December 20, 2001 letter to Ohio EPA and in the May 22, 2002 letter responding to citizen comments on Ohio EPA's Title V program. Ohio PIRG filed a petition for review of the May 22, 2002 letter. Accordingly, U.S. EPA is not addressing the adequacy of Ohio EPA's statements of basis in this report due to the pending litigation.

- C Preliminary Findings - Ohio requires sources to submit insignificant emission unit information in all Title V permit applications but exempts from the federally enforceable side of Title V permits the applicable requirements for insignificant emission units.

Final Findings - U.S. EPA issued a Notice Of Deficiency (NOD) to Ohio on April 10, 2002, 67 Fed. Reg. 19175 (April 18, 2002), finding the Ohio Title V program deficient because Ohio's insignificant emission unit regulations are not consistent with Title V requirements. Ohio EPA and two industry groups, the Ohio Chamber of Commerce and the Ohio Chemistry and Technology Council, filed petitions for review of the NOD in the United States Court of Appeals for the Sixth Circuit.

- C Preliminary Findings - Ohio EPA has not promulgated the NOx Phase II rules to complete the acid rain program.

Final Findings - Ohio EPA promulgated the necessary rules for the required NOx program. On October 2, 2002, Ohio EPA submitted the revised rules to U.S. EPA for review and rulemaking.

- C Preliminary Findings - If a Title V permit application contains confidential business information (CBI), Ohio EPA must provide a non-confidential version of the application for public review to meet public notice requirements. Because some applicants submitted only a CBI version, Ohio EPA has not provided those applications for public review.

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Final Findings - Ohio EPA changed the application instructions to require an applicant to submit a non-confidential application with the CBI version. Ohio EPA is working with the remaining three entities who submitted only a CBI application to obtain public versions of the applications.

- C Preliminary Findings - Ohio EPA appropriately responds to U.S. EPA's comments on draft PSD permits, and concerns are resolved prior to issuance of the final permits.

Final Findings - The preliminary findings stand as the final findings.

- C Preliminary Findings - Ohio EPA's permits or permit files lack adequate documentation on how Ohio EPA made PSD permitting decisions.

Final Findings - U.S. EPA continues to remain concerned that Ohio EPA maintain adequate documentation in permitting files to memorialize how it made permitting decisions. The issue of adequate documentation by itself does not constitute evidence of failure to issue appropriate PSD permits meeting the requirements of the PSD SIP.

- C Preliminary Findings - Ohio EPA's PSD delegation required Ohio EPA to grant an extension of time for review of and comment on a draft permit if the commenter who requested additional time demonstrated the need for the time. Ohio EPA failed to grant two formal, written requests by citizens to extend the 30-day public comment period for PSD permits.

Final Findings - U.S. EPA found no other instances where Ohio EPA failed to address a request for a comment period extension, nor was any information provided on this issue during the public comment period. The recently approved Ohio PSD SIP does not require Ohio EPA to grant a request to extend the 30-day public comment period. Nonetheless, U.S. EPA requests that Ohio EPA use its discretionary authority to allow such extensions of time in appropriate circumstances.

- C Preliminary Findings - U.S. EPA was concerned that Ohio EPA was making substantive changes to permits through administrative permit modifications without meeting public notice and comment requirements.

Final Findings - U.S. EPA's review of information submitted by Ohio EPA has shown that the lack of public participation in the administrative modification process is not as widespread as U.S. EPA previously assumed, and thus U.S. EPA's concerns regarding administrative modifications have reduced significantly. However, U.S. EPA continues to call upon Ohio EPA to ensure that it will not issue through its direct final process any

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administrative modifications of PTIs that involve substantive changes to permit conditions.

- C Preliminary Findings - U.S. EPA sought information from Ohio EPA on NSPS determinations for 14 Title V permit applicants. Ohio EPA did not provide this information prior to issuance of the Draft Report.

Final Findings - On October 15, 2001, Ohio EPA provided information on the 14 facilities that showed the facilities were not subject to NSPS standards. This information resolved U.S. EPA's concern.

II. BACKGROUND

A. THE PETITION

U.S. EPA, Region 5, received a petition from four Ohio environmental groups which, as amended and supplemented, expressed concerns about Ohio's environmental programs and asked U.S. EPA to withdraw its approval or revoke the federal delegation of the following Ohio CAA programs: Title V; NSR; PSD; noncompliance penalties; and NSPS.

The petition, submitted and amended in 1997, asked U.S. EPA to withdraw its approval of the Title V program based on concerns with the Ohio audit privilege and immunity law (Audit Law). Ohio has amended and interpreted the Audit Law to address U.S. EPA's authorization, delegation, and approval concerns. By a letter dated December 21, 2000, U.S. EPA denied the component of the petition that requested that U.S. EPA withdraw approval based on legal authority issues associated with the Audit Law.

Supplements to the original petition dated September 18, 1998, August 4, 1999, and January 27, 2000, added requests to withdraw all five air programs based on program implementation concerns.

B. U.S. EPA'S REVIEW OF OHIO EPA PROGRAMS

In response to the petitioners' concerns, U.S. EPA reviewed the air enforcement and permitting programs carried out by the Ohio EPA and the local air pollution agencies (LAAs) that implement and enforce air pollution laws in Ohio. This report addresses the allegations in the petition as supplemented.

Employees of U.S. EPA, Region 5, Air and Radiation Division and Office of Regional Counsel developed protocols for reviewing the enforcement and permitting issues alleged in the supplemented petition, and sent copies of the protocols to Ohio EPA and the petitioners.

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Pursuant to the process in the protocols, U.S. EPA reviewers gathered information from a variety of sources in early 2000, including on-site visits to Ohio EPA statewide and district offices and LAA offices (the Ohio EPA district and LAA offices are called collectively the “field offices”).

Ohio EPA’s Division of Air Pollution Control (DAPC) is responsible for implementing and enforcing all of Ohio’s air programs. Much of DAPC’s air program is carried out by its field offices, including LAAs that are not a part of Ohio EPA. Each LAA signs an annual contract with Ohio EPA that commits the LAA to conduct certain air implementation and enforcement activities consistent with Ohio EPA’s program.

Ohio EPA consists of the Central Office (CO), the Central District Office (CDO), the Northeast District Office (NEDO), the Northwest District Office (NWDO), the Southeast District Office (SEDO), and the Southwest District Office (SWDO). The following LAAs contract with DAPC: Akron Regional Air Quality Management District (RAQMD); Canton Department of Air Pollution Control (CDAPC); the Toledo Department of Public Utilities, Division of Environmental Services (TDES); the Portsmouth City Health Department, Air Pollution Unit (PLAA); the Hamilton County Department of Environmental Services (HCDOES); the Cleveland Department of Air Pollution Control (CLAA); and the Regional Air Pollution Control Authority (RAPCA). The North Ohio Valley Air Authority (NOVAA), which formerly contracted with Ohio EPA, closed in 1997.

The U.S. EPA reviewers chose the field offices to visit based on the location of facilities mentioned in the petition and on past experiences with the offices. The enforcement reviewers visited the following Ohio EPA offices: CO, Columbus; NWDO, Bowling Green; NEDO, Twinsburg; and HCDOES, Cincinnati. During the on-site visits, each office’s management gave an overview of its air programs and the reviewers examined facility-specific files and interviewed various Ohio EPA staff and management personnel.

The U.S. EPA reviewers prepared fact-finding reports to document the information gathered during the on-site visits and offered the visited office the opportunity to comment on all of these initial fact-finding documents.³

³ The U.S. EPA team reviewed facility specific files and, generally, looked at the period 1995-1999 for each facility. These files represented a wide range of facilities to provide a representative sample. Because Ohio EPA CO does not generally maintain complete case files, the CO case files reviewed do not show how Ohio EPA maintains its files, but to the extent the files contained relevant information, we have incorporated the information in our findings. The fact that reviewers noted the presence or absence of particular information in the files does not represent a definitive conclusion about the nature or quality of Ohio EPA’s enforcement work. Instead the reviewers used the information gathered from the file review, along with other information, as a basis for the recommendations on potential program improvements and the recommendations on commencing formal withdrawal proceedings.

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As part of the review, U.S. EPA used information from a variety of sources in addition to information gathered during the site visits. Most of this information was already in U.S. EPA's possession. Information included computer databases, previous fact-finding or State programmatic review documents, reports and records summarizing statewide data, and Ohio EPA audit reports of its field offices.⁴ The audit reports included self-assessment reports submitted to U.S. EPA as part of Ohio EPA's grant agreements with U.S. EPA and gathered by other parties (such as the U.S. EPA Inspector General's Office) or by Region 5 for purposes other than this review. U.S. EPA also considered information presented by the petitioners in the supplemented petition and affidavits submitted by citizens.

U.S. EPA did not limit its review to the precise issues and facilities raised in the petitions. To more holistically assess the effectiveness and adequacy of the Ohio EPA air enforcement and permitting programs in meeting required criteria, U.S. EPA performed a broad review of DAPC's programs. The period of time examined in the review generally spanned from October 1994 through October 2000, although U.S. EPA has included more recent data in some of its findings. U.S. EPA will incorporate all relevant documents from this review, or summaries of those documents into the administrative record.

U.S. EPA's intent in its review was to focus on the work performed by Ohio EPA and its field offices as it relates to federal requirements and regulations. For example, U.S. EPA reviewed records documenting Ohio EPA's inspections of air pollution sources to determine if the facilities are meeting federal regulations. U.S. EPA, however, did not specifically look at how Ohio EPA inspects sources subject to only State or local non-federally approved or delegated requirements. Where it was unclear whether information pertained to federal or state/local requirements, U.S. EPA considered that information as part of this review.

To obtain public input on Ohio's environmental programs, U.S. EPA held stakeholder meetings in Toledo, Ohio on April 22-23, 1997, and April 16, 1999, and in Cincinnati, Ohio on February 10-11, 2000. A summary of the transcripts of these meetings is in the administrative record.

On August 30, 2001, U.S. EPA issued a Draft Report with preliminary findings and recommendations for both the enforcement and permitting reviews.

C. PUBLIC REVIEW OF AND COMMENT ON DRAFT REPORT

⁴ Ohio EPA did not gather this information for purposes of responding to petitioners' allegations. Ohio EPA performs self-audits and self assessments as part of its routine activities. The Ohio EPA CO completed audits of Cleveland LAA in 1996 and 1999, NWDO in 1997, SWDO in 1998, TDES in 1998, and NOVAA in 1997.

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After issuing the Draft Report, U.S. EPA held two public meetings in Ohio on November 13, 2001, to give the public an opportunity to comment and to ask questions about the report. A summary of the transcripts of these meetings is in the administrative record. U.S. EPA accepted written comments during a public comment period. U.S. EPA also met and corresponded with Ohio EPA and continued to gather information relevant to the reviews.

U.S. EPA has reviewed all the public comments received on the Draft Report, and is addressing the comments in a responsiveness summary document.⁵ Most of the comments received pertaining to the CAA expressed general concerns about Ohio EPA's performance and the need for U.S. EPA action, and many indicated a need for effective enforcement of environmental laws in a manner that is more open to citizens. However, many of these comments did not provide information not already reviewed or addressed by U.S. EPA in its Ohio program review. Those comments which provided new information generally dealt with compliance issues for particular facilities. Very few of the comments directly addressed U.S. EPA's investigation process or its preliminary findings. The petitioners stated that U.S. EPA should use the facility-specific comments as evidence of Ohio EPA's inaction in implementing CAA programs. U.S. EPA does not agree that just because there are violating facilities in Ohio, Ohio EPA is improperly implementing CAA programs. It is reasonable to expect that in any given regulatory universe there will be violating entities. Their existence does not necessarily demonstrate a systemic failure of the regulator to implement program requirements on the majority of regulated entities.

To develop this report, U.S. EPA conducted a comprehensive five year review of Ohio EPA's files and activities, using protocols designed to investigate Ohio EPA's programs in light of the allegations and withdrawal criteria. To the extent that U.S. EPA identified in that review certain instances of inadequate program implementation with respect to certain facilities, U.S. EPA has identified those instances in this report or in the administrative record. U.S. EPA believes this overall program review was sufficient in analyzing whether there is a factual basis justifying the withdrawal petition. Moreover, the comprehensive program review provides a much clearer picture of Ohio EPA's overall program implementation than a focus on specific Ohio EPA actions with respect to a set of facilities.

During the public hearings, U.S. EPA indicated that it would consider only those comments relevant to matters it investigated to develop the Draft Report, and would not initiate any new reviews of issues not addressed in the Draft Report. This is because U.S. EPA needs to establish an end date for investigating the withdrawal petition so that U.S. EPA can decide whether to accept or deny the petition. Thus, comments identified as new matters for U.S. EPA review that were unrelated to U.S. EPA's investigation of the petition and the findings of the Draft Report

⁵ See the responsiveness summary for a more detailed discussion of the comments received and U.S. EPA's responses to those comments.

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are not addressed in this report and were not considered in making the final findings on the petition.

Ohio EPA, in its comments, indicated there were several preliminary findings that were inaccurate, and provided information to support those assertions. To the extent information received from Ohio EPA affects or is relevant to the preliminary findings, U.S. EPA discusses this information in this final report.

III. WITHDRAWAL CRITERIA

U.S. EPA transfers primacy in implementing federal CAA programs to a state through direct delegation of a federal regulatory program, or through approval of a state program. Each of these legal avenues has its own criteria and standards for approval or delegation, as well as for withdrawal, revocation, or other consequences of program inadequacies. In this section, U.S. EPA lays out the criteria for the five air programs the petitioners explicitly challenged: Title V, NSR, PSD, noncompliance penalties, and NSPS. In addition, U.S. EPA reviewed two air programs that the petitioners did not explicitly seek to have withdrawn, namely Ohio's State Implementation Plan (SIP) and the National Emission Standards for Hazardous Air Pollutants (NESHAPs) programs.⁶ While the petitioners did not seek withdrawal or revocation for those two programs, U.S. EPA reviewed Ohio's implementation of these programs because some of Ohio's other federal air programs, including its Title V permit program, were delegated or approved based, in part, on requirements laid out by those two programs. To the extent that U.S. EPA has concerns with Ohio's NESHAPs program that parallel the concerns with a similarly delegated program, the NSPS program, U.S. EPA has made findings pertaining to both programs.

The potential consequences for inadequate implementation vary from program to program. For example, the delegated NESHAPs and NSPS programs provide for "revocation" instead of "withdrawal." For the sake of simplicity in this report, U.S. EPA will generally consider the consequences of withdrawal and revocation to be synonymous. It is also important to note that U.S. EPA approved Ohio's PSD regulations as part of the Ohio SIP. For SIP approved programs, such as the NSR program or the approved PSD program, the consequences of

⁶ The NESHAPs program has two sets of federal regulations promulgated pursuant to section 112 of the CAA. The NESHAPs standards at 40 C.F.R. part 61 are health-based standards promulgated pursuant to the CAA Amendments of 1977. The NESHAPs standards at 40 C.F.R. part 63 are based on control technology, not on health standards, and were promulgated pursuant to the CAA amendments of 1990. These latter regulations are typically called the Maximum Achievable Control Technology (MACT) standards and cover a much broader range of facilities than the original NESHAPs program. U.S. EPA delegated the MACT standards to Ohio on July 11, 2001, 66 Fed. Reg. 36173. Since this MACT delegation is so recent, U.S. EPA could not review Ohio's implementation of the program. U.S. EPA has reviewed Ohio EPA's implementation of the MACT standards to the extent that Ohio EPA was required during the period under review to include MACT requirements in Title V permits.

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inadequate implementation generally include formal notices of deficiency by U.S. EPA, and the discretionary imposition of certain sanctions. For all five programs, it is necessary to compare the State's performance to a set of established criteria that define the levels of minimum acceptable performance by the State to determine whether the State's program is adequate. These "programmatic" criteria are laid out by statutes, regulations, guidance and policy, and the State's own articulated performance commitments. These programmatic criteria vary for each of the reviewed air programs.

Below is a brief discussion of the nature of each federal program approved or delegated to Ohio, with the relevant programmatic criteria and the criteria for imposing consequences for program inadequacies.

A. PERMIT PROGRAMS; TITLE V OF THE CAA AMENDMENTS OF 1990, SECTION 502 OF THE CAA (40 C.F.R. PART 70)

1. Background

Title V creates a permitting system where authorities (typically, states or local agencies) issue comprehensive operating permits to major sources of air pollution and certain other facilities that incorporate all state and federal requirements applicable to the facilities under the CAA. Section 502 of the CAA and the regulations at 40 C.F.R. § 70.4 describe the minimum necessary elements of an operating permit program administered by a permitting authority for U.S. EPA approval of the program (also called a "part 70 program"). Ohio submitted its part 70 program to U.S. EPA for Title V approval on July 22, 1994. U.S. EPA approved the program on August 15, 1995, 60 Fed. Reg. 42045, and it became effective on October 1, 1995.

On December 11, 2000, U.S. EPA issued a Federal Register notice requesting comments on deficiencies in all state Title V programs with full or interim approval, including Ohio EPA's program. Comments on the state Title V programs were due by March 12, 2001. U.S. EPA addressed comments received on Ohio EPA's Title V program pursuant to the Federal Register notice process rather than through the petition review. U.S. EPA's responses to these comments are in a March 22, 2002 letter from Stephen Rothblatt, Acting Director, Air & Radiation Division, U.S. EPA Region 5 to Keri N. Powell, United States Public Interest Group Education Fund, Inc., available at www.epa.gov/Region5/ARD-R5/permits.

2. Withdrawal Criteria

For Title V, the criteria for withdrawal and the withdrawal procedures are articulated in section 502(i) of the CAA and in the regulations at 40 C.F.R. § 70.10. Section 70.10(b) describes the procedures that apply if the state fails to administer or enforce its part 70 program. Under the CAA and 40 C.F.R. § 70.10(c), U.S. EPA has the authority to withdraw approval of the state

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Title V program. Criteria for withdrawal include:

- 1) failure to exercise control over activities required to be regulated under Title V, including failure to issue permits, 40 C.F.R. § 70.10(c)(1)(ii)(A);
- 2) repeated issuance of permits that do not conform to the requirements of Title V, 40 C.F.R. § 70.10(c)(1)(ii)(B);
- 3) failure to comply with the public participation requirements of section 70.7(h), 40 C.F.R. § 70.10(c)(1)(ii)(C);
- 4) failure to collect, retain, or allocate fee revenue consistent with section 70.9, 40 C.F.R. § 70.10(c)(1)(ii)(D);
- 5) failure to act in a timely way on any applications for permits, including renewals and revisions, 40 C.F.R. § 70.10(c)(1)(ii)(E);
- 6) failure to act on violations of permits or other program requirements, 40 C.F.R. § 70.10(c)(1)(iii)(A);
- 7) failure to seek adequate enforcement penalties and fines and collect all assessed penalties and fines, 40 C.F.R. § 70.10(c)(1)(iii)(B); and
- 8) failure to inspect and monitor activities subject to regulation, 40 C.F.R. § 70.10(c)(1)(iii)(C).

If the U.S. EPA determines pursuant to 40 C.F.R. § 70.10 that the state is not adequately administering the requirements of part 70, or that the state's program is inadequate in any other way, the state must revise the program or its means of implementation to correct the inadequacy. 40 C.F.R. § 70.4(i). Additionally, under the regulations at 40 C.F.R. § 70.10(b)(2), the U.S. EPA Administrator has the authority to a) withdraw approval of the program or the deficient portion of the program using the procedures laid out in 40 C.F.R. § 70.4(e); b) apply the sanctions outlined in section 179 of the CAA; and c) promulgate, administer, or enforce a federal Title V program in a state that fails to take significant action to assure adequate administration and enforcement within 90 days after U.S. EPA issues a notice of deficiency determining that the state is not complying with the requirements of Title V.

B. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY (PSD); SUBCHAPTER I, PART C OF THE CAA

1. Background

Pursuant to section 110(a)(2)(C) of the CAA, each SIP adopted by a state must include a plan to regulate the modification and construction of stationary sources within the areas covered by the plan, including a permit program as required in parts C and D of Subchapter I of the CAA. Generally, part C of Subchapter I of the CAA requires major sources in areas that are in attainment for the National Ambient Air Quality Standards (NAAQS) or are unclassified to obtain pre-construction permits to prevent significant deterioration of air quality. Ohio did not

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have an approved state PSD SIP program during the time period covered by the review. U.S. EPA had promulgated federal PSD regulations at 40 C.F.R. § 52.21 into the Ohio SIP. 40 C.F.R. § 52.1884, 45 Fed. Reg. 52741 (August 7, 1980). The Regional Administrator delegated authority to Ohio EPA to implement these federal PSD regulations. 40 C.F.R. § 52.21(u). The delegation document is dated November 7, 1988, and contains the relevant programmatic and revocation criteria. In the Draft Report, U.S. EPA applied the criteria for revocation of the PSD delegation specified in the delegation document to make preliminary findings on Ohio EPA's PSD enforcement and permitting activities.

Ohio submitted a State PSD SIP program in April 1996. On October 10, 2001, U.S. EPA published a notice in the Federal Register announcing it had conditionally approved Ohio EPA's PSD SIP. U.S. EPA published in the Federal Register on January 22, 2003, a direct final approval of Ohio's PSD SIP with the changes required by the conditional approval. See 68 Fed. Reg. 2909. Approval of Ohio's PSD SIP program was based on the criteria at 40 C.F.R. part 51. The PSD SIP rules are now federally enforceable in Ohio, and replace the delegation of the federal PSD regulations described above.

2. Revocation Criteria and Deficient SIP Criteria

As was stated in the Draft Report, because Ohio EPA was implementing the PSD program through a delegation of the program from U.S. EPA, U.S. EPA's focus for withdrawal centered on the delegation provisions. Since Ohio's PSD SIP is currently effective, concerns with Ohio EPA's implementation of the PSD program must be addressed under the PSD SIP, not the prior delegation of the federal PSD regulations. Therefore, U.S. EPA's findings concerning Ohio EPA enforcement and permitting activities under its PSD program have been assessed in this final report using the SIP withdrawal criteria discussed below.

Under the regulatory provisions for SIP deficiencies or failure to implement a SIP, the Administrator can call for a SIP revision when she finds that the plan is substantially inadequate to attain or maintain the NAAQS or otherwise comply with the requirements of the CAA. 42 U.S.C. § 110(k)(5). The Administrator must notify the state of the inadequacies and may establish reasonable deadlines, not to exceed 18 months after the date of notice, for the submission of plan revisions. The Administrator's findings and notice shall be public. Also, the Administrator can apply sanctions, as described in section 179 of the CAA and authorized by section 110(m) of the CAA, if the Administrator finds that any requirement of an approved plan (or approved part of a plan) is not being implemented. 42 U.S.C. § 7509(a)(4). Additionally, if circumstances warrant it, the Administrator could eventually disapprove a state's SIP in whole or in part, and establish a federal implementation plan in its place. 42 U.S.C. § 7410(c)

Another provision that deals with a state's failure to administer the implementation plan is section 113(a)(2) of the CAA. That section states that when the Administrator finds that

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violations of an applicable SIP are so widespread that such violations appear to result from a failure of the state to enforce the plan, she must notify the state. If the Administrator finds that the failure extends more than 30 days after notice to the state, the Administrator shall give public notice of such finding.

C. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES (NSPS); SECTION 111 OF THE CAA (40 C.F.R. PART 60)

1. Background

Section 111(c) of the CAA allows each state to develop and submit to U.S. EPA a procedure for implementing and enforcing standards of performance for new stationary sources located in the state. If the Regional Administrator finds that the state procedure is adequate, he shall delegate to the state his authority to implement and enforce those federal standards. NSPS standards are industry or facility based standards enacted through federal regulations at 40 C.F.R. Part 60. Ohio EPA requested that U.S. EPA delegate its authority to implement and enforce the NSPS program to Ohio EPA, and the U.S. EPA granted that request. The most recent delegation document is dated June 1, 1988, and contains the relevant programmatic and revocation criteria.

2. Revocation Criteria

Paragraph 10 of the NSPS delegation requires the State to notify the Regional Administrator if the State determines that, for any reason, it is unable to administer the program with respect to any new or existing standard. Upon such notice, the primary responsibility for enforcing the NSPS would return to U.S. EPA. Paragraph 5 of the delegation document states that if, after appropriate discussion with Ohio EPA, the Regional Administrator determines that an Ohio procedure for implementing and enforcing the NSPS is not in compliance with the federal regulations, or is not being carried out effectively, U.S. EPA may revoke the delegation in whole or in part.

D. PLAN REQUIREMENTS FOR NONATTAINMENT AREAS (NSR); SUBCHAPTER I, PART D OF THE CAA

1. Background

Subchapter I, part D of the CAA is entitled “Plan Requirements for Nonattainment Areas” and is also known as New Source Review for nonattainment areas. NSR is not a delegated program. Pursuant to section 110(a)(2)(C) of the CAA, each plan adopted by a state must include a program to provide for regulation of the modification and construction of stationary sources within the areas not in attainment of the National Ambient Air Quality Standards (NAAQS), including a permit program as required in parts C and D of Subchapter I. 42 U.S.C. §

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7410(a)(2)(C). U.S. EPA approved Ohio's initial NSR program as part of the Ohio SIP on April 15, 1974. U.S. EPA has also approved a number of amendments since then. 40 C.F.R. §52.1879.

2. Deficient SIP Criteria

Since Ohio's NSR program is part of its approved SIP, consequences for Ohio EPA's failure to implement or enforce its NSR program fall under the regulatory provisions for SIP deficiencies. These are the same provisions discussed under the deficient SIP criteria for PSD.

E. NONCOMPLIANCE PENALTIES; SECTION 120 OF THE CAA (40 C.F.R. PART 67)

Section 120 of the CAA requires the Administrator to promulgate regulations for assessing and collecting a noncompliance penalty against certain sources of air pollution that are not in compliance with emission limits. The purpose of the noncompliance penalty is to recover the economic benefit that a company gained as a result of its noncompliance. Section 120(a)(1)(B)(i) of the CAA allows each state to develop and submit to the U.S. EPA a plan for carrying out section 120 in the state. If the Administrator of the U.S. EPA finds that the state plan is adequate, she can delegate to the state her authority to implement section 120. The programmatic criteria for delegation are at 40 C.F.R. Part 67.

Section 120 noncompliance penalties should not be confused with administrative, civil or criminal penalties assessed under section 113 of the CAA. U.S. EPA can find no evidence that Ohio ever submitted an application or request to U.S. EPA to administer the noncompliance penalty program. Thus, U.S. EPA has not delegated the noncompliance penalty program to Ohio. To the degree that the petitioners highlighted this program due to their concern that Ohio EPA is not adequately assessing penalties against violators, penalty authority is a required element of the various delegated and approved State air programs and U.S. EPA examined the sufficiency of penalty assessments as part of its review of the other air programs.

IV. EVALUATION

The discussion below summarizes U.S. EPA's final findings, including summaries of document reviews, interviews, and analysis of data. In arriving at these findings, U.S. EPA considered information submitted by Ohio EPA and input from the public gathered during the public review period, as well as evidence of efforts by Ohio EPA to correct problems described in this report. The conclusions reached in this report are final findings concerning whether or not to initiate withdrawal or revocation proceedings.

A. ENFORCEMENT

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This report organizes findings in relation to the programs reviewed and the withdrawal or revocation criteria for each program. This enforcement section divides findings into two categories. The first category covers areas where U.S. EPA's concerns were more serious in nature and provides U.S. EPA's final findings on whether there is a sufficient basis to initiate withdrawal proceedings. The second category of findings, either singularly or collectively, do not warrant initiating withdrawal proceedings, or do not relate to the withdrawal criteria, but nonetheless were identified as areas of concern in the Draft Report.

In the Draft Report, U.S. EPA noted that Enforcement Allegations #1-9 and # 13,⁷ if well-founded, are relevant to the question whether commencing formal withdrawal proceedings is warranted. None of the comments received during the public comment period caused U.S. EPA to revise its assessment that the allegations are relevant to that question.

Similarly, the Draft Report stated that Enforcement Allegations #10-12, and #14,⁸ do not constitute grounds for withdrawal or revocation of a federally delegated or approved Ohio air program because they pertain to an area where Ohio has discretion in shaping its enforcement processes. Nothing in the comments received after U.S. EPA issued the Draft Report has caused U.S. EPA to revise this assessment.

1. Findings Relevant to Withdrawal Criteria

Before discussing the application of factual findings to withdrawal criteria on a program-by-program basis, this report summarizes the preliminary findings concerning the petitioners' allegations that U.S. EPA identified as relevant to withdrawal or revocation criteria for one or more air programs, and provides the final findings concerning these allegations.

a. General Finding: Resources

⁷ #1 (Ohio EPA has failed to inspect and monitor activities subject to regulation), #2 (Ohio EPA has failed to take enforcement action and responds slowly when enforcement is needed), #3 (Ohio EPA has failed to seek adequate penalties), #4 (Ohio EPA has failed to apply MSS requirements), #5 (Ohio EPA has failed to identify sources subject to MACT), #6 (Ohio EPA has failed to verify the truth and accuracy of representations made by regulated entities), #7 (Ohio EPA has failed to properly apply environmental regulations), #8 (The Audit Law prevents Ohio EPA and local agency access to information needed to document violations), #9 (Ohio EPA is hostile to citizens), and #13 (The Audit Law denies citizens access to information because Ohio EPA does not get the information from companies.)

⁸ #10 (Ohio EPA excludes citizens from discussions between it and regulated entities), #11 (Ohio EPA subjects citizens seeking access to records to excessive copying charges), #12 (Ohio EPA accepts company representations as true while citizen complaints are subjected to complex procedures that reduce the likelihood that Ohio EPA will investigate or verify a complaint), and #14 (Ohio EPA excludes citizens from having input into the enforcement process).

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Preliminary Findings - Although not specifically identified as a deficiency by petitioners in Enforcement Allegations #1-14, U.S. EPA's review addressed Ohio EPA's level of resources to administer its federally approved or delegated CAA programs. 40 C.F.R. § 51.280 requires that the SIP submitted by a state include a description of resources available to the state and local agencies at the date of submission, as well as any additional resources needed to carry out the plan in subsequent years. Under the Title V regulations, 40 C.F.R. § 70.4(b)(8), a Title V operating permit program submitted by a state must include a statement that adequate personnel and funding are available to administer and enforce the program. When Ohio EPA first submitted its Title V program for approval in 1992, it estimated that DAPC would need 399 employees to run all of its air programs once the Title V program was in place. As of December 4, 2000, DAPC only had 222 employees on staff. Comparing the 222 DAPC employees to the 399 estimate, U.S. EPA found that many of the problems noted during the Ohio petition review might have resulted from under-staffing. During discussions with Ohio EPA about its performance under a 1997 Environmental Performance Partnership Agreement (EnPPAs),⁹ Ohio EPA indicated that, to meet its Title V permitting requirements, it would allocate more resources toward permitting and less toward enforcement and inspections.¹⁰

Final Findings - On October 22, 2001, Ohio EPA commented on the air portion of the Draft Report that U.S. EPA failed to count a significant portion of staff who work in the air program.¹¹ Ohio EPA stated there were 385 State and local air agency employees performing air pollution work in Ohio and that the shortfall from Ohio EPA's 1992 estimate was 14 employees and not 179. On November 8, 2001, U.S. EPA issued a "Clarifications, Errata and Updates to the August 30, 2001, Draft Report on U.S. EPA Review of Ohio Environmental Programs."¹² That document noted that Ohio EPA's projection of 399 employees necessary to operate its air program included local air agency employees as well as Ohio EPA staff, and that the number of Ohio EPA and local air agency employees who work in air programs was just under 399.

After issuing the preliminary findings, U.S. EPA continued to gather information to use in

⁹ An EnPPA, which is a voluntary agreement, often serves as both an instrument to define the partnership relationship between a state and U.S. EPA for the upcoming fiscal year and a vehicle for providing grant money to the state. An EnPPA lists environmental activities both U.S. EPA and a state agency will perform during the upcoming fiscal year.

¹⁰ Though Ohio EPA's reference to a grant agreement in its Title V program submittal may raise the concern that Ohio EPA is using grant money to fund its Title V program, which the Title V regulations do not allow, this is not the case. To ensure no commingling, Ohio EPA has created a dual accounting system where it tracks all Title V and non-Title V expenses independently. Additionally, Ohio EPA performs an audit every three years of this system. The latest audit was done in 2000, and a copy of the report is included in the administrative record.

¹¹ See OPR-GEN-0042 in the administrative record.

¹² See OPR-GEN-0043.

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making its final findings. Among the additional documents U.S. EPA examined was "A Study of the Air & Water Permitting Operations at Ohio EPA Pursuant to H.B. 283" prepared by Ohio EPA's Divisions of Air Pollution Control and Surface Water.¹³ In that document, dated March 2001, Ohio EPA noted there were 414 total statewide air pollution control positions available. Thus, it appears the level of resources Ohio currently dedicates to its air programs is larger than its 1992 estimate, and Ohio is to be commended for this investment.

With regard to Title V, Ohio EPA acknowledged that it had reduced the number of inspections in 1997 and 1998 to concentrate on issuing Title V permits and had informed U.S. EPA of the shift in the context of the EnPPA negotiations. The reduction in inspections would suggest Ohio EPA did not have sufficient personnel to complete all of the enforcement work. However, in more recent years, Ohio has not required such a shift. In addition, as noted in this report's section on enforcement activity, Ohio EPA finalized a new structure for the DAPC that includes a section dedicated to enforcement, which will further reduce the likelihood of competing priorities between enforcement and other program areas.

Based on the information above, U.S. EPA's final finding is that the number of employees assigned to carry out air pollution work in Ohio is not significantly different than the number Ohio EPA stated was necessary when it projected its resource needs.

On July 1, 2002, Ohio Governor Bob Taft signed an executive order which ordered a 15 percent budget reduction to several State agencies, including Ohio EPA, for fiscal year 2003. On October 28, 2002, U.S. EPA requested that Ohio EPA provide a written response as to whether the 2003 budget reduction may impact its ability to meet commitments made during the course of the Ohio program review, and if so, how.¹⁴ Christopher Jones, Director of the Ohio EPA, responded in a letter dated December 12, 2002.¹⁵ He stated that overall it appears the budget cut will not affect any of the commitments that Ohio EPA has made to U.S. EPA. Although the 15 percent cut was substantial, Ohio EPA is funded primarily through fees and federal grants. General revenue funds make up approximately 15 percent of the overall air program budget. A 15 percent reduction in general revenue funds equates to approximately a 2.5 percent reduction in air program funding. This level of reduction will not impact Ohio EPA's ability to meet its air program commitments made to U.S. EPA as part of the program review. Director Jones stated that a recent review of those commitments with U.S. EPA program staff showed that Ohio EPA has met or is on schedule to meet all the commitments. The only commitment that will be somewhat delayed is the commitment to evaluate the feasibility of placing Continuous Emission

¹³ See OPR-CAA-0224.

¹⁴ See OPR-CAA-0284.

¹⁵ See OPR-CAA-0255.

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Monitoring (CEM) data on the Ohio EPA website.

b. *Enforcement Allegation #1: Inspection and Monitoring*

Preliminary Findings - U.S. EPA air enforcement reviewers looked at Ohio EPA's inspection and monitoring program in reviewing Enforcement Allegation #1 (failure to inspect and monitor activities subject to regulation). Ohio EPA's projections for resource allocation in its Title V operating permit program application indicated it planned to perform annual inspections of all A-1, A-2, NSPS and NESHAPs sources covered by Title V.¹⁶ Based on the information U.S. EPA reviewed, Ohio EPA is not conducting annual inspections of all A-1, A-2, NSPS, and NESHAPs sources. U.S. EPA observed a downward trend in the number of Ohio EPA inspections in each of these source categories over the past five years, with the greatest decline in A-1 source inspections, the class of the largest emission sources. In addition, Ohio EPA referred to its section 105 grant agreements to describe its Title V compliance tracking system. The basis for inspection commitments in past section 105 grant agreements was U.S. EPA's March 1980 "Inspection Frequency Guidance," which requires that state inspections be at least level 2 inspections.¹⁷ The file records that U.S. EPA reviewed did not show that Ohio EPA is routinely conducting level 2 inspections at all facilities.

Ohio EPA has implemented a very expansive and successful CEM program. Under a CEM program, a source continuously monitors its emissions, and reports those emissions on a quarterly basis or when exceedances of permit limits occur. Ohio EPA estimates there are about 350 CEM systems installed at 260 facilities. It is unclear, however, how much the high number of CEMs mitigates the overall drop in inspections. Although a properly run CEM program provides reliable, up-to-date emission information on the covered sources, Ohio has over 10,000 emissions sources. Therefore, the sources with CEMs represent a small minority of Ohio's overall regulated air sources. Additionally, a well run CEM program does not substitute for a well designed field inspection program for discovering violations.

Final Findings - Ohio EPA's October 22, 2001, comments asserted that U.S. EPA had significantly understated the number of inspections performed. In addition, Ohio EPA

¹⁶ An A-1 source is defined as a stationary source of air pollution having actual or potential controlled emissions greater than 100 tons per year, in accordance with the definition in the *Alabama Power* decision. See *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1980). The key principle enunciated in *Alabama Power* is that the permitting authority consider actual or potential emissions after application of federally enforceable pollution controls. By contrast, an A-2 source is a stationary source of air pollution having actual emissions of less than 100 tons per year, but whose uncontrolled emissions would be greater than 100 tons per year (e.g., if the pollution control equipment were turned off or disconnected).

¹⁷ Level 2 inspections of air sources must include, at a minimum, reviewing on-site documents and logs, recording relevant operating parameters of a facility, and observing and noting any visible emissions.

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commented that U.S. EPA failed to recognize the significant inspection effort that is necessary to inspect non-major facilities and failed to take those inspections into account in the Draft Report. Ohio EPA also noted that the report failed to recognize the annual inspections at 1,554 gas stations and inspections at 15 percent of the asbestos demolition projects.

U.S. EPA agrees that the preliminary data in the Draft Report did not include all inspections conducted by Ohio EPA. Some of the inspection data that Ohio EPA cited in its comments had not been reported to U.S. EPA and had not been entered into U.S. EPA's electronic database.¹⁸ In addition, U.S. EPA did not include some of Ohio's inspections in the Draft Report because they were not relevant to the withdrawal criteria.¹⁹

Since the issuance of Draft Report, U.S. EPA has had a series of discussions with Ohio EPA to reconcile Ohio EPA's inspection numbers with U.S. EPA's numbers. The following table represents a comparison of inspection numbers reported by Ohio EPA to U.S. EPA after issuance of the Draft Report, to U.S. EPA's tabulation of inspections from its AIRS database.

Year	A1, A2, and B sources	NSPS	NESHAP
1995	2849 Ohio EPA 3025 AIRS	265 Ohio EPA 266 AIRS	191 Ohio EPA 215 AIRS
1996	2853 Ohio EPA 2807 AIRS	283 Ohio EPA 280 AIRS	94 Ohio EPA 120 AIRS
1997	2380 Ohio EPA 2398 AIRS	213 Ohio EPA 209 AIRS	128 Ohio EPA 147 AIRS

¹⁸ Previous to the Draft Report, U.S. EPA obtained inspection data from Ohio EPA field office quarterly reports and manually entered that data into U.S. EPA's AIRS Facility Subset (AFS) database. See OPR-CAA-0307 for copies of the portions of the reports containing such data. Because these reports did not identify some inspections to U.S. EPA, these inspections were not in the AFS database. Thus, a discrepancy occurred between the inspection numbers relied upon in the Draft Report and the numbers referenced by Ohio EPA in its comments on the Draft Report. Ohio EPA's FY 2003 grant agreement provides a commitment for Ohio EPA to enter inspection data directly into AFS through its new inspection tracking system, so that Ohio EPA will no longer need U.S. EPA to enter data into the AFS system. See OPR-CAA-0248. Because Ohio EPA will now directly report data into AFS, U.S. EPA expects that discrepancies in inspection numbers between the U.S. EPA and Ohio EPA will no longer occur.

¹⁹ U.S. EPA staff prepared an August 28, 2001 report on the air enforcement portion of the Ohio petition review. This report contains additional data on inspections conducted by Ohio EPA not mentioned in the Draft Report. U.S. EPA sent that more detailed report to Ohio EPA and the petitioners on September 21, 2001. See OPR-CAA-0026.

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1998	1607 Ohio EPA 1895 AIRS	152 Ohio EPA 148 AIRS	86 Ohio EPA 102 AIRS
1999	1619 Ohio EPA 1755 AIRS	164 Ohio EPA 162 AIRS	182 Ohio EPA 190 AIRS
2000	2136 Ohio EPA 1748 AIRS	174 Ohio EPA 171 AIRS	175 Ohio EPA 156 AIRS

Ohio EPA's inspection data show that, after a generally downward trend in inspections between 1995 and 1999, inspections increased between 1999 and 2000.

For the Final Report, U.S. EPA is unable to compare current Ohio inspection activity with activity which occurred prior to the Draft Report, because inspection tracking has changed with the issuance of U.S. EPA's revised Compliance Management Strategy (CMS) policy.²⁰ Under the 2001 CMS policy, new categories of inspection activities replace categories tracked by states and U.S. EPA prior the Draft Report. These new categories reflect the CMS policy's emphasis on Title V major sources and a limited subset of synthetic minor sources, as well as the use of full compliance evaluations.²¹ Thus, U.S. EPA has different expectations regarding inspections since the issuance of the Draft Report.

The 2001 CMS policy recommends minimum inspection frequencies based on the inspection expectations described in the policy. U.S. EPA has reviewed Ohio EPA's Compliance Management Strategy (CMS) projections for FY 2002²² and 2003²³, as well as its inspection

²⁰The most recent U.S. EPA policy documents discussing U.S. EPA expectations for a state's CMS program are in the administrative record under OPR-CAA-0274 (April 25, 2001 "Issuance of Clean Air Act Stationary Source Compliance Monitoring Strategy"), and OPR-CAA-0275 (October 22, 2001 "Clean Air Act Stationary Source Compliance").

²¹A full compliance evaluation, described in the 2001 CMS policy, is more comprehensive than the "level 2" inspection recommended by prior U.S. EPA policy. A full compliance evaluation addresses all regulated pollutants and all regulated emission units at a facility, and includes the use of several investigative techniques to determine compliance.

²²See OPR-CAA-0291 (May 6, 2002 email from Dave Brown, Ohio EPA, to Lisa Holscher, U.S. EPA). As of January 2003, a tabulation of actual inspections conducted for FY 2002 has not been completed.

²³See OPR-CAA-0280 (November 25, 2002 email from Dave Brown, Ohio EPA, to Lisa Holscher, U.S. EPA)

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frequency commitments contained in its FY 2003 grant agreement²⁴. Based on this review, U.S. EPA finds that Ohio EPA current inspection projections are consistent with the 2001 CMS policy.

Ohio EPA, in its October 22, 2001 comments, also disagreed that the file records U.S. EPA reviewed did not show that Ohio EPA is consistently conducting level 2 inspections. Ohio EPA said it is conducting level 2 inspections and its contracts with local air agencies require that they conduct level 2 inspections. Ohio EPA provided statistics concerning opacity observations and performance tests witnessed which Ohio EPA believes are the best indicator to demonstrate that it is performing level 2 inspections.

The file records reviewed by U.S. EPA show that Ohio EPA either did not routinely conduct level 2 inspections at all facilities where such inspections were required, or did not adequately document all level 2 inspections conducted. Records of opacity observations or records of performance tests that Ohio EPA witnessed do not establish that a level 2 inspection was performed at a facility. Moreover, Ohio EPA audits of LAAs have found a lack of level 2 inspection documentation in LAA files.²⁵ Ohio EPA and the LAAs, however, may have performed level 2 inspections that were not adequately documented in the inspection records.

Although U.S. EPA identified in the Draft Report a concern regarding the number of inspections, particularly level 2 inspections, Ohio EPA has significantly changed its program in light of the 2001 CMS policy and committed to make additional changes that address U.S. EPA's preliminary findings. Ohio EPA has committed to revise the way it conducts inspections by adopting an acceptable Compliance Monitoring Strategy (CMS) when selecting facilities for inspection and when conducting inspections.²⁶ Under the FY 2003 grant workplan CMS commitment, Ohio EPA is committing to perform a significant number of full compliance

²⁴ See OPR-CAA-0248. To receive grant funds under section 105 of the CAA, U.S. EPA requires states to establish annual workplans which include commitments to meet certain program goals. OPR-CAA-0248 includes a workplan for FY2003. See page 16 of the workplan, paragraph 1.

²⁵ In 1996, Ohio EPA audited the Cleveland LAA and found that only 24 percent of the emissions units audited had fully adequate file documentation. See OPR-CAA-0221 (August 20, 1997 letter from Ohio EPA enclosing November 1996 Cleveland LAA program evaluation). The 1999 audit of the Cleveland LAA had similar findings. See OPR-CAA-0220 (July 30, 1999 report "Performance Evaluation of the Air Pollution Control Program operated by the Cleveland Local Air Agency"). For example, Ohio EPA found that, for 87 percent of the organic compound sources, it couldn't find a compliance demonstration in the file, or the demonstration was incorrect.

²⁶ See OPR-CAA-0248. The specific commitment to implement an acceptable CMS is in the grant workplan document at page 16, paragraph 1.

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evaluations.²⁷ Ohio EPA's CMS commitment, including the commitment to conduct full compliance evaluations, should result in inspections of far greater thoroughness than even a complete level 2 inspection would provide. In addition, on November 5, 2002, Ohio EPA committed to implement a revised inspection form and instructions in Ohio EPA and the LAA offices.²⁸ U.S. EPA expects that the revised inspection form and instructions will improve Ohio EPA's ability to identify violations during inspections.

In the FY 2003 grant workplan, Ohio EPA committed to implement a new electronic reporting system.²⁹ This system will use new compliance monitoring software which will be compatible with and allow Ohio EPA to submit data directly to U.S. EPA's AFS compliance tracking system. The use of an electronic reporting system will improve the recordkeeping system for tracking information upon which Ohio EPA and U.S. EPA rely.

c. Enforcement Allegations #1 and 2: Vacancies

Preliminary Findings - U.S. EPA's interviews with management and staff indicate that it takes one to two years for a new employee to become adept at enforcement work. Over the past few years, it appears DAPC has had a 10-20 percent vacancy rate at its various offices for all positions. In one of its audits of the Cleveland LAA, Ohio EPA noted that longstanding problems associated with the field offices' enforcement program were a direct reflection of the high degree of turnover of staff and management. The Draft Report called for Ohio EPA and the LAAs to fill existing vacant positions and to retain trained experienced staff.

Final Findings - Ohio EPA's October 22, 2001 comments stated that it believes the number of

²⁷ Under the FY 2003 grant workplan, Ohio EPA commits that, among other things, "(e)very significant emissions unit at a Title V facility or non-registration emission unit at a synthetic minor facility will be inspected and evaluated under the criteria of the CMS for a full compliance evaluation. (A full compliance evaluation includes an inspection of each emission unit and a comprehensive evaluation of the compliance status of each term of the applicable PTI(s) and operating permit for the emission unit.) Insignificant activities at a high priority facility or registration emissions units may or may not be fully evaluated at the inspector's discretion."

²⁸ See OPR-CAA-0255. In its comments on the Draft Report, Ohio EPA noted that it had formed a workgroup that was revising the inspection form and instructions used by the Ohio EPA and LAAs. The November 5, 2002 letter includes an October 28, 2002, e-mail in which Ohio EPA provided a revised inspection form it plans to use. Instructions for the form are under development. In addition, as noted in the October 28, 2002 e-mail, separate inspection guidance pertaining to PSD is under development. Ohio EPA is expecting to have an initial draft of this guidance by February 2003. See OPR-CAA-0298 (January 13, 2003 email from Tammy Van Walsen, Ohio EPA, to William MacDowell, U.S. EPA).

²⁹ Under the FY 2003 grant workplan at page 16, Ohio EPA commits that, among other things, "(i)information concerning inspections, compliance status, and enforcement information will be submitted to U.S. EPA on a monthly basis. Information on all newly identified sources will be submitted to U.S. EPA on a quarterly basis. At a minimum, this information will include the AFS Minimum Data Elements."

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vacant positions at any one time cannot be used to assess the degree to which knowledgeable staff are in place. Ohio EPA pointed out that some vacancies represent new positions and other vacancies are created due to promotions. In the case of promotions, for example, experienced staff are not lost. Ohio EPA believes that the 20 percent vacancy rate cited by U.S. EPA was based on an Ohio EPA DAPC June 1999 vacancy level of 26 vacancies. Of the 26 vacancies, only ten represented staff actually leaving Ohio EPA's air program.

Further, Ohio EPA's October 22, 2001, comments stated that Ohio EPA has increased its staff over the years reviewed and a portion of the vacancy rate is due to positions posted for college interns, promotions and newly created positions.

Ohio EPA also commented that U.S. EPA failed to acknowledge Ohio EPA's extensive effort to monitor the Cleveland local air agency and provide training to its staff. That effort was necessary since the Cleveland agency historically has had high turnover and vacancy rates. Given the large number of citizens who live in the area under the jurisdiction of the Cleveland agency, Ohio EPA is commended for its efforts to improve the performance of the Cleveland local air agency.

After review of the information Ohio EPA submitted in its comments, U.S. EPA agrees that one cannot look solely at vacancy rates as a means of determining if sufficient experienced staff are present to maintain a fully functional air enforcement program. Based on Ohio EPA's comments, it appears that some of Ohio EPA's "vacancy" postings for promotions and new positions are temporary and do not represent actual loss of staff. U.S. EPA finds that vacancy rates alone are not an accurate measure of program effectiveness for purposes of reviewing Ohio EPA's program against the CAA withdrawal criteria.

d. Enforcement Allegation #1: Training

Preliminary Findings - Most new Ohio EPA and LAA inspectors go through a program of training and attend telecourses or live courses related to the work they perform. Additionally, Ohio EPA has an active mentoring program where more experienced staff are matched with new staff for training purposes. However, U.S. EPA reviewers found that Ohio EPA's training was inconsistent from field office to field office, and that the lack of a standardized training material and a training program could impact staff performance. Many of the Ohio EPA employees interviewed stated that better training was important for them to more adequately meet their job requirements.

Final Findings - In its October 22, 2001 comments, Ohio EPA noted it has taken several actions to improve staff training and has participated in a number of training activities over several years. It has established a training committee in the DAPC. Ohio EPA disagrees that training must be

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completely consistent throughout the field offices and stated that by allowing customized training programs within each field office it recognizes the needs of those offices.

More recently, in a March 19, 2002, email, Ohio EPA provided U.S. EPA with a draft description of the minimum training curriculum for new entry level employees working in permitting and enforcement areas in Ohio.³⁰ In the e-mail, Ohio EPA indicated that it would solicit comment on the draft from the field offices and U.S. EPA. Further, the e-mail states Ohio EPA's commitment that, upon considering comments received and making appropriate adjustments, Ohio EPA will formally require field offices to implement the curriculum by including training requirements in future contracts with LAAs and by requiring that Ohio EPA offices include the training in professional development plans for staff.

In addition, on February 27, 2002, Ohio EPA provided to U.S. EPA a description of Ohio EPA's plans for in-house NSR training.³¹ Ohio EPA has developed a Basic NSR/Basic Permit Writing course for district offices and LAAs. Between March and June 2002, Ohio EPA provided the course to all field office permitting staff.³² The February 27, 2002 email also described the development of an advanced NSR/Advanced Permit Writing course. Ohio EPA and U.S. EPA are working together to develop and schedule this advanced training course for March 2003.³³ U.S. EPA expects these training courses will aid enforcement staff in identifying and addressing violations of PSD and nonattainment NSR requirements.³⁴

Ohio EPA has taken steps to meet U.S. EPA's concerns. U.S. EPA will continue to work with Ohio EPA on its training commitments for enforcement staff.

e. Enforcement Allegation #2: Enforcement Activity

³⁰ See OPR-CAA-0243 (March 19, 2002 e-mail from Tom Rigo, Ohio EPA, to William MacDowell, U.S. EPA).

³¹ See OPR-CAA-0235 (February 27, 2002 email from Tom Rigo, Ohio EPA, to William MacDowell, U.S. EPA).

³² See OPR-CAA-0295 (January 13, 2003 email from Mike Hopkins, Ohio EPA, to William MacDowell, U.S. EPA).

³³ See OPR-CAA-0295.

³⁴ Although Ohio EPA's description of its NSR courses indicate they are intended for "permit writers," U.S. EPA expects these courses to aid enforcement because in Ohio most of the field office permit writers are also enforcement inspectors.

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Preliminary Findings - In Enforcement Allegation #2, the petitioners questioned the adequacy of Ohio EPA's enforcement activities, including the speed in responding to violators. The number of enforcement cases resolved has dropped in the past few years. However, the number of new cases has remained fairly steady. Although the overall numbers demonstrate that Ohio EPA enforces its air programs, Ohio EPA's audits of district and local agency offices found unsatisfactory enforcement performance in parts of the state during the time period under review.

Final Findings - In its October 22, 2001 comments, Ohio EPA commented that U.S. EPA should have included the cases resolved in conjunction with the Ohio Attorney General's office.

Recent data generated by Ohio EPA indicates that it has substantially reduced the number of unresolved cases that are two years old and older.³⁵ Those substantial reductions took place in both calendar years 2000 and 2001. By the end of 2001, Ohio EPA reported it had resolved all but one of its administrative CAA cases that would have been two years old in December 2001.³⁶

On March 18, 2002, Ohio EPA provided via email to U.S. EPA information regarding Ohio EPA's reorganization as it relates to enforcement issues.³⁷ In May 2000, Ohio EPA's DAPC launched a study of the efficiency of its structure. The March 18, 2002 email indicates that on March 11, 2002, Ohio EPA finalized a new structure for the DAPC based on the study, which will include a section dedicated to enforcement. In the email, Ohio EPA indicates that a separate enforcement section is necessary because the existing structure creates conflicting priorities. Because staff have both permitting and enforcement responsibilities, time for reviewing Title V and state operating permits compete with working on enforcement actions. Ohio EPA anticipates that the new section will result in a more efficient enforcement process with case resolutions being the top priority of the new enforcement section.

As an additional note, Ohio EPA noted in its October 22, 2001 comments its concern that by using the results of Ohio EPA's field office audits in a review of a withdrawal petition, U.S. EPA is discouraging future audits. U.S. EPA delegated many federal programs to Ohio EPA, and approved Ohio EPA's SIPS based, in part, on Ohio EPA's representations that it would carry out an effective enforcement program in Ohio. The audits conducted by Ohio EPA make a significant contribution to ensure that an effective enforcement program is in place and to help field offices improve their performance in carrying out delegated responsibilities. Ohio EPA agreed to resume regular audits of its field offices and plans to audit one office each quarter of

³⁵ See OPR-CAA-0256 (Ohio EPA document entitled "Summary of 2001 Enforcement Performance," dated April 2002).

³⁶ See OPR-CAA-0256, page 9.

³⁷ See OPR-CAA-0242 (March 18, 2002 e-mail from Tom Rigo, Ohio EPA, to William MacDowell, U.S. EPA).

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the year.³⁸ Ohio EPA conducted an audit of the Canton LAA on October 2, 2002.³⁹

f. Enforcement Allegation #3: Penalty Recovery

Preliminary Findings - Enforcement Allegation #3 questions whether Ohio EPA has been recovering adequate penalties. As with other trends, Ohio EPA had an overall decrease in cumulative penalties in the past few years. Ohio EPA committed in its past EnPPAs and grant agreements to use U.S. EPA's Clean Air Act Civil Penalty Policy for all of its penalty calculations, and has confirmed the practice during the on-site visits of this review. U.S. EPA examined a number of penalty calculations performed by Ohio EPA to evaluate whether they were performed using U.S. EPA's CAA penalty policy. Although some penalty calculations were well done, the penalty calculations reviewed by U.S. EPA were not always consistent with each other or with the policy, appeared to apply different daily penalty amounts for similar cases, and did not use the daily penalty adjustments laid out in the policy. Additionally, most of the penalty calculations did not consider or make use of the adjustment factors in the policy. In many cases, there was no calculation of economic benefit. Moreover, in various calculations, Ohio EPA incorrectly figured the size of a violator to be equal to some percentage of its overall gross sales. Finally, Ohio EPA did not cite a facility for multiple violations for penalty purposes when there were multiple violations, except for the gravity component for duration of violation.

Final Findings - Ohio EPA's October 22, 2001 comments asserted that it is unreasonable to expect that penalties will be consistent or show an increase from year to year. Moreover, Ohio EPA commented that it considers the adjustment factors in U.S. EPA's CAA penalty policy, it always calculates economic benefit when there is an economic benefit, and U.S. EPA had not indicated previously that Ohio EPA calculated penalties inappropriately. Ohio EPA also explained why it does not assess a daily penalty for certain violations.

U.S. EPA looked at penalty collection figures over a multi-year period from 1995 through 1999. Generally, the penalties collected by Ohio EPA dropped from one year to the next over this period. However, more recent penalty data indicate that, after a decline in total penalties in calendar year 2000 (in most categories), there was a substantial increase in administrative penalties in 2001 and an increase in total penalties assessed by the Ohio EPA and the Ohio

³⁸ See OPR-CAA-0245 (May 9, 2002 e-mail from Tom Rigo, Ohio EPA, to William MacDowell, U.S. EPA). Note that Ohio EPA recently informed U.S. EPA that it has halted its audits of field offices until it resolves disagreements district offices have with Ohio EPA's revised audit protocol. See OPR-CAA-OPR-CAA-0299 (January 7, 2003 telephone conversation record between Lisa Holscher, U.S. EPA, and Tom Kalman and Jenny Nichols, Ohio EPA). It is U.S. EPA's understanding that Ohio EPA will continue field office audits once it resolves the audit protocol issues with the district offices.

³⁹ See OPR-CAA-0299.

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Attorney General's Office combined.⁴⁰ U.S. EPA does not expect that penalties will always increase on a year to year basis. Nonetheless, recent trends do show that penalty totals are increasing whereas in earlier years the more common trend was for penalty totals to decrease.

As a result of continuing discussions between Ohio EPA and U.S. EPA, Ohio EPA provided a description of how it calculates penalties for failure to obtain permits to install and permits to operate.⁴¹ Until U.S. EPA can review Ohio EPA's use of this description for calculating penalties over a period of time, U.S. EPA cannot determine presently whether this description will address its concerns.

U.S. EPA reviewed specific penalty calculations by reviewing available records including penalty worksheets attached to findings and orders. We recommend that, when no economic benefit is listed, Ohio EPA provide a brief explanation on the penalty calculation sheet. We also recommend that Ohio EPA note which adjustment factors it applied in calculating the penalty.

g. Enforcement Allegation #4: Applicability of PSD and NSR

Preliminary Findings - U.S. EPA's review under this allegation focused on major sources in the PSD/NSR programs, and Ohio EPA's ability to identify unpermitted major sources. U.S. EPA earlier discussed its concerns as to potential deficiencies in Ohio EPA's inspection program. If sources are not inspected, or not inspected thoroughly, modifications and new construction can be missed. This means that the source may not comply with applicable major source requirements in a timely or proper manner. Furthermore, according to a recent Government Accounting Office report entitled "Air Pollution: EPA Should Improve Oversight of Emissions Reporting by Large Facilities," GAO-01-46, April 6, 2001, routine inspections may not be enough to identify major modifications and new construction potentially triggering PSD/NSR applicability. Ohio EPA currently conducts only routine inspections, and does not appear to employ more aggressive methods necessary to identify sources circumventing the PSD and NSR programs. Additionally, Ohio EPA has no guidance for staff on identifying unpermitted major sources. Ohio EPA has stated that it relies on U.S. EPA guidance related to unpermitted major source circumvention and its inspectors check for new or modified sources when performing minor source inspections.

Final Findings - In its October 22, 2001 comments, Ohio EPA asserted that U.S. EPA's

⁴⁰ See OPR-CAA-0234 (Ohio EPA report entitled "Summary of the 2001 Enforcement Activities and 2002 Objectives," one of the enclosures in a February 20, 2002 letter from Robert Hobandosi, Ohio EPA, to William MacDowell, U.S. EPA), and OPR-CAA-0256 (Ohio EPA report dated April 2002 entitled "Summary of 2001 Enforcement Performance").

⁴¹ See OPR-CAA-0235 (February 27, 2002 e-mail from Tom Rigo, Ohio EPA, to William MacDowell, U.S. EPA).

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preliminary findings on this issue are inaccurate. Ohio EPA noted that emission sources must submit a variety of reports on emissions from their facilities. Stack test reports and emission inventory reports provide additional information. Ohio EPA said that these reports and other sources of information establish a system for Ohio EPA to find violations of PSD requirements.⁴² Outreach by Ohio EPA staff through conferences and speeches is another mechanism through which Ohio EPA discovers PSD violators. Ohio EPA noted that it will be making new or modified asphalt plants test for VOC emissions which may identify additional PSD sources. Ohio EPA noted that it has permitted many sources as synthetic minor sources through federally enforceable state operating permits which limit the emissions of those sources. Ohio EPA also commented that it permits emission units at lower emission thresholds than other states. By requiring more sources to enter the permitting process, Ohio EPA is more likely to identify sources subject to major source permitting requirements.

In the October 22, 2001 comments, Ohio EPA indicated that studies conducted by U.S. EPA show Ohio EPA issues more PSD permits than other states and that “[t]hese figures suggest Ohio EPA is effectively identifying sources which require PSD permits.” Ohio EPA also stated it was open to specific guidance from Region 5 on what additional measures other states are using to locate possible PSD sources.⁴³

As noted earlier in this report, Ohio EPA committed, in its FY 2003 air grant application, to an inspection program focusing on more thorough inspections at major sources. The more thorough inspections, known as full compliance evaluations, are more likely to identify process changes that would trigger PSD applicability. In addition, Ohio EPA will be using an improved inspection form with improved instructions, and is developing PSD guidance for inspectors. These measures will further improve Ohio EPA’s ability to identify PSD sources.

Ohio EPA’s commitment to audit field offices⁴⁴ will also help improve the identification of PSD sources by insuring that field offices are conducting proper inspections, are maintaining and reviewing records, including those that lead to the identification of PSD sources, and are pursuing violations found during inspections and record reviews.

⁴² A more complete description of Ohio EPA’s efforts to find PSD violators is described in its October 22, 2001 comments on the Draft Report. See OPR-GEN-0042.

⁴³ In response to Ohio EPA comments, U.S. EPA sent Ohio EPA a list of possible ways to identify PSD sources on March 12, 2002. See OPR-CAA-0240 (March 12, 2002, e-mail from Jeffrey Bratko, U.S. EPA, to Jim Orlemann, et al., Ohio EPA).

⁴⁴ See OPR-CAA-0245 (May 9, 2002 e-mail from Tom Rigo, Ohio EPA, to William MacDowell, U.S. EPA).

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As discussed in section IV.A.1.d. of this report, above, Ohio EPA's plans to conduct NSR training will aid enforcement staff in identifying and addressing violations of PSD and nonattainment NSR requirements.

In sum, the activities Ohio EPA described that it uses to identify sources subject to PSD requirements, combined with its specific commitments to improve its discovery of PSD violators, have mitigated U.S. EPA's concern with regard to this allegation.

h. Enforcement Allegation #6: Verification of Accuracy of Statements Made by Regulated Entities

Preliminary Findings - Petitioners' Allegation #6 alleges that Ohio EPA fails to verify the truth and accuracy of representations made by regulated entities. In prior section 105 grant agreements, Ohio EPA committed to review company reports submitted to show compliance with federal requirements. Ohio EPA stated that it would review the reports for completeness, accuracy, and compliance. In its review, however, U.S. EPA found no evidence that Ohio EPA inspectors or staff are routinely verifying the accuracy of reports submitted to Ohio EPA. A quality assurance/quality control (QA/QC) policy and manual for checking the accuracy and completeness of information supplied by a company could improve Ohio EPA's performance in this area.

Final Findings - In its October 22, 2001 comments, Ohio EPA stated it believes that all staff understand that all the documents and information submitted by the regulated community cannot be accepted simply at face value. Ohio EPA commented that experienced staff routinely seek to verify submissions from regulated sources and new staff are trained to do so. In addition, Ohio EPA noted it witnesses certification tests for CEMs.

Ohio EPA's commitment to perform more thorough inspections in the future should result in more detailed inspections which will help verify the accuracy of statements made by many regulated entities.⁴⁵ In addition, Ohio EPA developed a checklist for use by field offices to ensure that entities submit complete Title V deviation reports.⁴⁶ When meeting with U.S. EPA to discuss the Draft Report, Ohio EPA indicated it would consider expanding that checklist to cover the review of other information submitted by facilities in Ohio.

Regarding the review of reports for accuracy, an additional source of concern is that the STARS system Ohio EPA relied on to track company reports has not worked. Since the system has not

⁴⁵ See section IV.A.1.b, above. Full compliance evaluations include the inspector's review of all CAA required reports.

⁴⁶ See OPR-CAA-0300 (June 6, 2002 email from Tom Rigo, Ohio EPA).

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worked and it replaced previous report tracking systems, many field offices in Ohio did not have a system in place for tracking the receipt of reports from companies. To address this problem, Ohio EPA issued guidance for tracking reports and implemented this guidance in its field offices, effective July 1, 2002.⁴⁷ That interim tracking system will remain in place for approximately two years. By the end of this interim period, Ohio EPA plans to have a rebuilt STARS system operational that will address the system's report tracking deficiencies.⁴⁸

U.S. EPA still believes that a QA/QC policy and manual for checking the accuracy and completeness of information supplied by a company could improve Ohio EPA's performance in this area.

i. Enforcement Allegations #5, 7, 8, and 13

Preliminary Findings - For Enforcement Allegations #5 (Ohio EPA has failed to identify sources subject to MACT), #7 (Ohio EPA has failed to properly apply environmental regulations), #8 (the audit privilege law prevents Ohio EPA and local agency access to information needed to document violations), and #13 (the audit privilege law denies citizens access to information because Ohio EPA does not get the information from companies), U.S. EPA reviewers did not find evidence of enforcement deficiencies significant enough to incorporate into U.S. EPA's findings pertinent to commencing withdrawal or revocation proceedings. Enforcement Allegation #5 holds less relevance to this review. Since U.S. EPA has only recently formally delegated the MACT standards to Ohio, U.S. EPA could not review how Ohio has implemented the program due to the short period of program primacy by Ohio. U.S. EPA will continue to oversee Ohio's implementation of this program. Enforcement Allegation #7 was largely dealt with in the discussion of Enforcement Allegations #4 and 6. Enforcement Allegations #8 and 13 touch upon the petitioners' concerns that the Audit Law has affected Ohio EPA's implementation of its delegated and approved CAA programs. Because the Audit Law was recently changed, U.S. EPA did not evaluate the current law's impact on Ohio's programs.

Final Findings - No information gathered during the public comment period caused U.S. EPA to change its preliminary findings regarding allegations # 5, 7, 8, and 13.

2. Application of Factual Findings to Withdrawal Criteria for Each Program

Below is a discussion of preliminary and final application of factual findings to the withdrawal criteria of the CAA programs. In the Draft Report, U.S. EPA identified certain areas of concern

⁴⁷ See OPR-CAA-0255 (November 4, 2002 letter from Robert Hobandosi, Ohio EPA, to Steve Rothblatt, U.S. EPA). Enclosed in the letter is an April 29, 2002 email from Tom Rigo, Ohio EPA to the field offices including the guidance and requiring each field office to have a tracking system in place no later than July 2002.

⁴⁸ See the April 29, 2002 email in OPR-CAA-0255.

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as germane to the withdrawal criteria for each program, and discussed application of the withdrawal criteria to those concerns. Below, for each area of concern identified in the Draft Report, U.S. EPA summarizes the Draft Report's findings and application of withdrawal criteria, and provides the final application of withdrawal criteria to these areas, including a discussion of measures Ohio EPA has taken to address the areas.

a. Title V

- (1) Declining inspection numbers, penalties collected, enforcement activity, Ohio EPA's training program, and ability to review representations made by industry

Preliminary Application to Withdrawal Criteria - U.S. EPA identified the following preliminary findings concerning the petitioners' enforcement allegations as germane to the withdrawal criteria under Title V: drop in inspections and enforcement numbers; drop in collected penalties; inconsistency of calculated penalties; resources; lack of a systematic employee training program; and lack of a system to review representations made by industry. U.S. EPA also noted that due to recent trends in Ohio EPA's enforcement activities, Ohio EPA may be having difficulty identifying applicable requirements not included in Title V applications by industry. U.S. EPA stated that while Ohio EPA should improve its Title V enforcement program, the problems identified did not warrant initiation of withdrawal proceedings without further review. U.S. EPA indicated that most of DAPC's Title V enforcement problems appear to result from a lack of personnel and a lack of resources. The Draft Report contained recommendations to ameliorate the programmatic enforcement concerns identified. U.S. EPA indicated that if Ohio EPA did not address these recommendations and if its lack of resources continued to present a problem, U.S. EPA might find that these declining trends, in connection with the lack of systematic procedures for training employees and reviewing industry representations, serve as a basis for initiating withdrawal proceedings.

Final Application to Withdrawal Criteria - As noted in the final findings section of this report on the enforcement allegations, Ohio EPA's staffing levels are higher than U.S. EPA previously believed. In addition, Ohio EPA inspection data shows that it performed more inspections than federal records indicated, and that current inspection projections are consistent with U.S. EPA's 2001 CMS policy. More recently, both inspection totals and penalty totals increased. Ohio EPA committed to use a more thorough inspection process, develop a more formal training curriculum, and implement a procedure for tracking reports submitted by companies. Based on these facts, U.S. EPA finds there is insufficient basis to initiate withdrawal proceedings.

- (2) Inspection, monitoring and enforcement tracking plans under Title V

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Preliminary Application to Withdrawal Criteria - In its 1994 Title V program submittal, Ohio EPA did not provide implementation guidance, including criteria for monitoring source compliance (e.g., inspection strategy), as required under 40 C.F.R. § 70.4(b)(4)(ii). Ohio EPA was also required to submit a complete description of its compliance tracking and enforcement program.

Final Application to Withdrawal Criteria - In its response to U.S. EPA's Draft Report, Ohio EPA stated that it is willing to work with Region 5 to develop a more complete description of its compliance monitoring and enforcement strategies. Ohio EPA also asked that the final report note that U.S. EPA did not raise this issue in the course of its full approval of Ohio's Title V program. At present, Ohio EPA has not submitted its criteria for monitoring source compliance. It should be noted, however, that Ohio EPA is implementing an acceptable CMS, which will address full compliance evaluations for Title V facilities, as described in its FY 2003 grant workplan.

b. PSD

- (1) Declining inspection numbers and lack of specific procedures for identifying unpermitted PSD sources

Preliminary Application to Withdrawal Criteria - U.S. EPA found that a low level of inspections, lack of a comprehensive inspection system to identify unpermitted PSD sources, and lack of a program devoted to detect facilities or sources not in the permitting system were germane to the withdrawal criteria for revoking the PSD delegation. U.S. EPA independently identified various Ohio PSD violators during the five years prior to issuance of the Draft Report, which suggested Ohio EPA should have discovered more PSD violators. U.S. EPA indicated that although these concerns alone may not warrant program withdrawal, they may rise to this level in the future if Ohio EPA does not take steps to implement the recommended changes.

Final Application to Withdrawal Criteria - As noted in the final findings section of this report pertaining to enforcement allegations, Ohio EPA identified a number of activities that it conducts to identify sources subject to PSD. Ohio EPA's current inspection projections are consistent with U.S. EPA's 2001 CMS policy. In addition, Ohio EPA plans to make more thorough inspections, use a revised inspection form, develop PSD guidance for use by inspectors, hold NSR training courses, and make the other changes described previously. On these facts, U.S. EPA finds insufficient basis to initiate withdrawal proceedings at this time.

- (2) Ohio EPA's reliance on its permitting system

Preliminary Application to Withdrawal Criteria - U.S. EPA was concerned that Ohio EPA was operating under a system where it could only enforce PSD requirements if a source had obtained

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a PSD permit. Under this system, Ohio EPA could not cite a source for violating PSD emission standards where the source submitted all relevant information in its state permit application, but Ohio EPA did not identify the source as subject to PSD and did not include the relevant federal standards in the permit. U.S. EPA indicated, however, that Ohio EPA's PSD rules submitted for approval as part of the SIP, which would be directly enforceable against PSD violators, mitigated this concern.

Final Application to Withdrawal Criteria - U.S. EPA has approved Ohio's PSD SIP. Ohio EPA now has the authority to cite directly to its state regulations for violations by sources subject to PSD that failed to obtain a PSD permit. This is no longer an area of concern.

c. NSPS AND NESHAPs⁴⁹

- (1) Declining inspection numbers, penalties collected, and enforcement activity

Preliminary Application to Withdrawal Criteria - U.S. EPA was concerned that Ohio EPA's decline in inspection, investigation and enforcement activity has made it difficult for Ohio EPA to enforce against NSPS and NESHAPs violators. In Ohio, permit conditions are the mechanism for state enforcement of the NSPS and NESHAPs. Because Ohio EPA has not adopted NSPS or NESHAPs standards, it must incorporate the standards in a source's state permit before it can enforce the standards against the source. Because of the declining number of inspections, Ohio EPA may not identify all applicable NSPS or NESHAPs sources not already discovered through the permitting system, and may not ensure that all permits have all applicable NSPS and NESHAPs requirements. U.S. EPA noted that Ohio EPA does not have a specific program to identify NSPS sources that currently do not have permits.

Final Application to Withdrawal Criteria - As noted in the final findings section of this report pertaining to enforcement allegations, Ohio EPA's current inspection projections are consistent with U.S. EPA's 2001 CMS policy. Recent data show that case conclusions and penalties collected have increased. Ohio EPA's plans to conduct more thorough inspections, and reorganize the DAPC to establish an enforcement section are steps that U.S. EPA expects will improve Ohio EPA's enforcement of the NSPS and NESHAPs programs.

Ohio EPA also has implemented a report tracking system to ensure that companies are submitting the reports they are required to submit, including reports submitted pursuant to NSPS and NESHAPs requirements. In addition, Ohio EPA has developed a checklist that will help in

⁴⁹ The petitioners did not directly seek revocation of Ohio's NESHAPs program. Due to U.S. EPA's parallel concerns in the NSPS and NESHAPs programs, U.S. EPA has incorporated its findings on the NESHAPs program into the NSPS portion of this review.

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reviewing a limited number of reports that may include information about NSPS and NESHAPs sources.

On these facts, U.S. EPA finds insufficient basis to initiate withdrawal proceedings.

- (2) Ohio EPA's reliance on its permitting system and permit exemptions for certain NSPS and NESHAPs source categories

Preliminary Application to Withdrawal Criteria - U.S. EPA identified two categories of NSPS and NESHAPs regulated sources that may be exempt from requirements to obtain a PTI under Ohio law, wood fuel-fired heaters and asbestos removers. This affects Ohio EPA's ability to enforce federal standards against these sources.

Final Application to Withdrawal Criteria - Ohio adopted a prior version of the NESHAPs asbestos standards through state regulations. These regulations do not include the 1990 revisions to the federal NESHAPs regulations. Ohio EPA has proposed revisions to its asbestos regulations to align them with the federal asbestos NESHAPs regulations.⁵⁰

With respect to the residential wood heater NSPS requirements, Ohio EPA noted that this NSPS is designed to regulate the manufacture and sale of residential wood heaters, and does not regulate the use of wood stoves at the homeowner level. It also noted that it would be a poor use of resources for Ohio EPA to focus on manufacturers and sellers of wood stoves, because as a state agency it can not enforce against those manufacturers and sellers that are outside of its state.

U.S. EPA finds that Ohio EPA cannot enforce the residential wood heater NSPS through its permitting system. U.S. EPA will address this issue when it amends the Ohio NSPS delegation, which U.S. EPA plans to do in 2003.

- (3) Municipal solid waste landfills

Preliminary Application to Withdrawal Criteria - Based on the decline of resources devoted to inspections, Ohio EPA may not identify and include appropriate NSPS requirements in PTIs for all landfills subject to the NSPS.

Final Application to Withdrawal Criteria - Since the issuance of the Draft Report, U.S. EPA has

⁵⁰ See OPR-CAA-0251 (November 26, 2002 email from Tom Buchan, Ohio EPA, to Lisa Holscher, U.S. EPA).

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reviewed Ohio EPA's permitting and enforcement activities with respect to the landfill NSPS.⁵¹ On the basis of that review, U.S. EPA has not found any major deficiency of Ohio EPA's implementation efforts with regard to this NSPS. To the extent that the preliminary finding on this issue was based, in part, on U.S. EPA's concerns about Ohio EPA's inspection program, Ohio EPA addressed those concerns by changes and commitments discussed elsewhere in this report.

- (4) Subdelegation of delegated PSD, NSPS, and NESHAPs programs to local agencies

Preliminary Application to Withdrawal Criteria - U.S. EPA preliminarily found that Ohio EPA was subdelegating its duties under the PSD, NSPS, and NESHAPs delegated programs, and that the delegation documents for these programs require that before Ohio EPA subdelegates the programs, it must get Region 5's approval for the subdelegation.

Final Application to Withdrawal Criteria - U.S. EPA reviewed the draft FY 2002 LAA contract, dated January 31, 2001.⁵² The Ohio EPA contracts with LAAs are identified clearly as "delegations" and should be treated as such under the delegation agreement between U.S. EPA and Ohio EPA. In the future, U.S. EPA will review Ohio EPA's draft contract with an LAA for approval under NESHAPs and NSPS delegations.

- (5) Ohio EPA reporting to U.S. EPA under the various delegations

Preliminary Application to Withdrawal Criteria - Ohio EPA is not including all of the required information in annual and quarterly reports it submits to U.S. EPA on NSPS, NESHAPs, and PSD.

Final Application to Withdrawal Criteria - U.S. EPA sent Ohio EPA a detailed list of reporting requirements that are in the CAA or in regulations promulgated pursuant to the CAA.⁵³ U.S. EPA will work with Ohio EPA to revise existing NSPS and Part 61 NESHAPs delegation agreements and to clarify reporting issues related to those delegated programs.

⁵¹ See OPR-CAA-0306 (January 16, 2003 memo from Julie Monahan, U.S. EPA, entitled "Review of Ohio Environmental Protection Agency Landfill Program from 2001 to present).

⁵² See OPR-CAA-0249.

⁵³ See OPR-CAA-0239 (March 8, 2002 email from Jeffrey Bratko, U.S. EPA, to Jim Orlemann, et al., Ohio EPA).

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In addition, Ohio EPA, in consultation with U.S. EPA, developed an electronic reporting system for reporting certain information to U.S. EPA.⁵⁴ That system began operation in July 2002 with some subsequent delays due to necessary changes. Moreover, as discussed in section IV.A1.b., in its FY 2003 grant application workplan. Ohio EPA committed to implement an electronic reporting system to report data directly into U.S. EPA's AIRS database. Ohio's new system will maintain a complete and accurate inventory for all regulated sources. Information concerning inspections compliance status, and enforcement will be submitted on a monthly basis.

Provided the reporting problems are reduced as a result of the changes being implemented, U.S. EPA finds insufficient basis to initiate withdrawal proceedings.

d. NSR

Preliminary Application to Withdrawal Criteria - At the time of the Draft Report, most of Ohio's airsheds were in compliance with the NAAQS, and because of this, Ohio has issued only four NSR permits in the five years prior to the Draft Report. U.S. EPA discovered nothing to suggest Ohio is inadequately implementing the NSR program.

Final Application to Withdrawal Criteria - None of the information gathered during and after public comment period has caused U.S. EPA to change its preliminary finding regarding this issue. U.S. EPA has found no concerns with Ohio's NSR program or the administration of this program that provides a basis to initiate withdrawal proceedings.

e. Noncompliance Penalty Program

Preliminary Application to Withdrawal Criteria - Since U.S. EPA never delegated to Ohio or independently approved Ohio to administer and enforce the noncompliance penalty program, U.S. EPA cannot withdraw delegation or approval of that program. To the degree that the petitioners sought withdrawal of this program because of their concerns as to the adequacy of penalties recovered by Ohio EPA, U.S. EPA reviewed penalties as part of its review of the other programs.

Final Application to Withdrawal Criteria - U.S. EPA received no new information on this issue and the preliminary application stands as the final application.

3. Concerns Not Serious Enough to Provide a Basis for Initiating Withdrawal Proceedings or Otherwise Not Related to Withdrawal Criteria

Certain allegations discussed in the Draft Report are either not directly related to the withdrawal

⁵⁴See OPR-CAA-0248, page 15 of FY 2003 grant workplan, no. 4 under FFY 2002 narrative.

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criteria, or if related, any deficiencies in Ohio EPA's program are not serious enough to provide a basis for withdrawal or revocation. The final findings regarding these matters are discussed below.

Enforcement Allegation #9: Compliance with Procedures Included as Part of Ohio's Original Approved SIP Regarding Citizen Complaints

Final Findings - In regard to Enforcement Allegation #9, much of U.S. EPA's review focused on how Ohio EPA handles citizen complaints. U.S. EPA reviewed Ohio EPA's original SIP submittal commitments, which included commitments to have 24-hour complaint investigations and to create field patrols. U.S. EPA found one field office of the four reviewed handles complaints on a 24-hour basis, and none of the field offices had field patrols.

Ohio EPA's October 22, 2001, comments noted that each Ohio EPA district office has a toll free number for complaints and Ohio EPA also operates a statewide hotline to accept reports of spills, including air releases.

Ohio EPA indicated that the many activities its field staff conducts now constitute adequate implementation of CAA programs. U.S. EPA agrees with Ohio EPA that there have been many technological improvements over the years in the area of source monitoring. Similarly, U.S. EPA does not dispute Ohio EPA's position that field patrols may not be the most effective and efficient enforcement tool. U.S. EPA cannot, however, unilaterally change those SIP requirements and establish alternate activities despite the effectiveness of the alternate activities.

We recommend that Ohio EPA formally revise its SIP to reflect the effective and efficient enforcement techniques used in 2002 to enforce the Ohio SIP.

Enforcement Allegations #9, 10 and 14: Mechanisms for Incorporation of Public Participation

Final Findings - In the Draft Report, U.S. EPA strongly encouraged Ohio EPA to fully implement the public participation provisions of section 3704.033 of Ohio's Revised Code, which is part of Ohio's approved SIP. In its October 22, 2001, comments on the Draft Report, Ohio EPA noted that its Public Interest Center (PIC) is redesigning its web page to make it easier for citizens to find environmental information and learn how to get involved. In addition, in November 2001, the PIC issued a new version of a brochure titled "Public Participation at Ohio EPA."⁵⁵ The brochure was revised to address U.S. EPA's comments on the availability of information on how to file complaints. The brochure now includes information on how to file complaints and a detailed description of the verified complaint process.

⁵⁵ See OPR-CAA-0234 (Brochure is an attachment to the February 20, 2002 letter from Robert Hobandosi, Ohio EPA, to William MacDowell, U.S. EPA).

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Enforcement Allegations #10 and 14: Citizens Input into the Enforcement Process

Final Findings - U.S. EPA recognizes that many aspects of enforcement are confidential. Due to the sensitive nature of settlement negotiations and the confidentiality accorded to them by law, citizens cannot participate unless they are co-plaintiffs or interveners in the enforcement action. Nonetheless, citizens have played a vital role in proposing and identifying supplemental environmental projects.

Enforcement Allegation #11: Copying Fees

Final Findings - U.S. EPA reviewed Ohio EPA's fee policy for copies of documents, and the Ohio EPA central and district offices appear to follow this policy. U.S. EPA could not confirm that all of the LAAs follow this policy. In its October 22, 2001, comments on this issue, Ohio EPA stated that it needed to ensure that all the LAAs were complying with Ohio law in the handling of public records requests and charging only for the cost of copying the records requested by the public. Ohio EPA also stated that in its contracts with LAAs for fiscal year 2002 it required that the LAAs have reasonable copying charges for all public records requests.

Enforcement Allegation #12: Investigations of Citizens' Complaints

Final Findings - U.S. EPA reviewed trends for complaint investigations over the five years prior to the Draft Report, and found that the overall complaints investigated significantly dropped during that period. The drop-off occurred across all categories of air sources, but was slightly more pronounced for A-1 sources. The exact reason for the decline is unclear, and it is difficult to draw any conclusion based on this data, especially given differing trends between field offices. It is possible that the decline may simply be caused by fewer complaints coming into Ohio EPA.

U.S. EPA also found that many complaints received by Ohio EPA are informal, rather than verified complaints received through the procedures under Ohio Administrative Code 3745.08. In its comments on the preliminary findings, Ohio EPA noted that although the information on how to file a verified complaint is available on its web site, someone unfamiliar with Ohio EPA or its web site might have difficulty locating the information. Ohio EPA stated that it will evaluate how to make the information easier to find on the web site. In addition, as mentioned earlier, Ohio EPA has revised its brochure titled "Public Participation at Ohio EPA" to include more specific information on both informal and verified complaints.⁵⁶ U.S. EPA hopes these improvements in the way Ohio EPA informs the public about the verified complaint process will encourage citizens to use the verified complaint process, which will aid Ohio EPA in responding

⁵⁶ See OPR-CAA-0234.

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to complaints.

4. Other Identified Issues Not Related to the Allegations

In performing its review, U.S. EPA identified other issues concerning the availability of emissions data to the public and field audits. U.S. EPA has made final findings on these two matters as set forth below.

Availability of Emissions Data to the Public

Final Findings - Ohio EPA indicated that the data from CEMS have always been available to the public upon request. Ohio EPA also stated that it might be possible to add the quarterly summaries to its website and it would check into the resources and procedures necessary to make the information available on its web site on a routine basis.

Field Audits

Final Findings - As noted elsewhere in this report, Ohio EPA has committed to resume audits of the local air agencies on a regular basis.

B. PERMITTING

The permitting reviewers investigated issues pertaining specifically to Ohio's Title V, PSD, NSR, and NSPS permitting programs, as well as some broader Ohio EPA programmatic issues affecting all of these programs. As background, Ohio issues three types of permits: PTIs, permits to operate (PTOs), and Title V operating permits. PTIs are generally issued prior to construction or modification of a source and are enforceable by U.S. EPA since the state issues them pursuant to a delegated federal or a SIP approved program. PTOs are renewed periodically, and generally are not federally enforceable. Under the Title V permitting program, the states issue operating permits that contain all applicable state and federal requirements under the CAA. Each Title V permit is bifurcated into federally enforceable and non-federally enforceable parts.

As with the enforcement findings, the air permit review findings are divided into two categories: those that potentially provide a basis for commencing withdrawal or revocation proceedings if not properly addressed; and those that do not lay a basis for commencing withdrawal or revocation proceedings. All of the general allegations concerning Ohio EPA's air permit program, if well-founded, would be relevant to the question of whether U.S. EPA should commence formal withdrawal or revocation proceedings. Therefore, whether a finding is germane to the issue of withdrawal depends on the gravity of the problems identified. Relevant

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findings under U.S. EPA's review of the allegations are included in the discussion of each air program. Our review of Ohio EPA's nonattainment NSR program found no major concerns in regard to permitting. For Allegation # 7 (Ohio EPA has failed to collect appropriate permitting fees under Title V), U.S. EPA only evaluated the process Ohio EPA uses to collect fees and found it acceptable.⁵⁷ U.S. EPA did not evaluate the adequacy of Ohio EPA's permitting fees.

1. FINDINGS RELEVANT TO WITHDRAWAL CRITERIA

a. Title V

In regard to Ohio's Title V program, U.S. EPA permit reviewers investigated petitioners' Permitting Allegations # 1 (Ohio EPA has failed to correctly determine a facility's status as a MSS in nonattainment or PSD areas for purposes of Title V applicability), #3, (Ohio EPA has failed to permit sources in a timely manner), #5 (Ohio EPA has failed to correctly determine a facility's HAP emissions for purposes of Title V applicability) and #6 (Ohio EPA has failed to be responsive to citizens or to make publicly available necessary information).

(1) Permitting Allegation #3: permit issuance rate

Preliminary Findings - One of the criteria for withdrawal of a Title V program is the failure to exercise control over activities required to be regulated under Title V, including failure to issue permits. 40 C.F.R. § 70.10(c)(ii)(A). Ohio EPA has issued Title V permits since 1996, and should have issued all Title V permits by October 1, 1998. As of April 2001, Ohio EPA had issued final permits for only 30 percent of the Title V permit applications it had received, although it had provided draft permits for public comment for over 72 percent of the Title V applications. Despite this, Ohio EPA's issuance rate still falls well below the national average.

Final Findings - On March 15, 2002, Ohio EPA committed in writing to a schedule to issue all initial Title V permits by September 1, 2003.⁵⁸ U.S. EPA cited Ohio EPA's schedule and commitment in a May 22, 2002 letter responding to citizen comments on Ohio EPA's Title V program.⁵⁹ Ohio EPA then met its June 1, 2002, and January 1, 2003 milestones for permit

⁵⁷ U.S. EPA reviewed the August 13, 2000 report from Hemphill and Associates entitled "Ohio Environmental Protection Agency: The Title V Program Review for the Federal Fiscal Years Ended September 30, 1997 and September 30, 1998." See OPR-CAA- 0281. Hemphill and Associates is the accounting firm that was awarded the contract with Ohio EPA to conduct an independent audit of Ohio EPA's air pollution control fee programs, including the Title V fees.

⁵⁸ See OPR-CAA-0260.

⁵⁹ See OPR-CAA-0265.

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issuance, and as of January 2003, Ohio EPA had issued 75 percent of its initial Title V permits.⁶⁰ Ohio PIRG filed a petition for review of the May 22, 2002 letter in the United States Court of Appeals for the Sixth Circuit.⁶¹ In light of the pending litigation, U.S. EPA is not making a final finding on permit issuance in this report.

(2) Permitting Allegations #1 and 5: Title V permit deficiencies

Preliminary Findings - In the permitting portion of the Draft Report, U.S. EPA considered whether Ohio EPA was including all applicable requirements in a Title V permit, as required by 40 C.F.R. § 70.6(a)(1). U.S. EPA indicated the same Ohio EPA personnel assigned to inspect a source and write the PTIs and PTOs are reassigned to review that source's Title V permit application and draft the Title V permit. Based on this system, U.S. EPA did not have grounds to suspect Ohio EPA was not including in Title V permits those applicable requirements it had already identified under its PTI and PTO programs. The permitting review did not investigate specifically whether Ohio EPA, when reviewing Title V permit applications, detects sources subject to requirements that were not identified through its permitting programs. This is because such detection is done more effectively through inspections, compliance monitoring, and other enforcement activities, than through the permit review process. U.S. EPA reviewed these issues in the review of Enforcement Allegations #1, 4, 5, 6, and 7.

Final Findings - None of the information obtained during the public comment period caused U.S. EPA to amend its preliminary findings on this issue. The preliminary findings stand as the final findings.

(3) U.S. EPA's review of draft Title V permits issued by Ohio EPA

Preliminary Findings - At the time of U.S. EPA's investigation of the petitioners' allegations, U.S. EPA had reviewed about 10 percent of draft Title V permits to ensure that the permits were properly drafted, included all necessary components, and captured all requirements applicable to the sources. U.S. EPA identified issues with draft Title V permits that, if unresolved, would result in U.S. EPA objecting to future Title V permits. These concerns include the federal legal status of superseded construction permits, Ohio's assertion that BAT SIP regulations are

⁶⁰ See OPR-CAA-0267 (June 5, 2002 report from Ohio EPA entitled "Title V Processing Statistics for May 2002"), and OPR-CAA-0295 (Ohio EPA report entitled "Processing of Title V Permit Applications: 12/31/2002 Update").

⁶¹ See OPR-CAA-0226.

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state-enforceable only, and the lack of an adequate statement of basis in many Title V permits.⁶²

Final Findings - Since U.S. EPA raised the issue of superseded construction permits in its May 18, 1998 letter to Ohio EPA, U.S. EPA has not identified any Ohio EPA draft Title V permit which contains language that the permit superseded or replaced specific PTI conditions. As for the BAT and lack of adequate statement of basis issues, U.S. EPA addressed these issues in a May 22, 2002 letter responding to citizen comments on Ohio EPA's Title V program.⁶³ Ohio PIRG filed a petition for review of that letter.⁶⁴ In light of the pending litigation, U.S. EPA is not making any final findings on these issues in this report.

(4) Adequacy of statements of basis

Preliminary Findings - 40 C.F.R. § 70.7(a)(5) requires that a Title V permitting authority provide a statement that sets forth the legal and factual basis for all draft Title V permit conditions (including references to the applicable statutory or regulatory provisions). Although Ohio EPA has committed to provide statements of basis with all draft Title V permits, U.S. EPA is concerned as to the adequacy of those statements of basis.

Final Findings - In its comments on the Draft Report, Ohio EPA expressed concern with the lack of guidance about an adequate statement of basis. In response, U.S. EPA provided guidelines to Ohio EPA in a December 20, 2001, letter.⁶⁵ This letter outlines five areas to improve Ohio

EPA's statements of basis. U.S. EPA addressed Ohio EPA's statements of basis in a May 22, 2002 letter responding to citizen comments on Ohio EPA's Title V program.⁶⁶ Ohio EPA then changed its statement of basis form to incorporate some of U.S. EPA's guidelines.⁶⁷ Ohio PIRG

⁶² See OPR-CAA-0269 (May 18, 1998 letter from U.S. EPA to Ohio EPA on supersession issue), OPR-CAA-0270 (June 18, 1999 letter from U.S. EPA to Ohio EPA on BAT issue), and OPR-CAA-0271 (November 10, 1997 letter from U.S. EPA to Ohio EPA on statement of basis issue).

⁶³ See OPR-CAA-0265.

⁶⁴ See OPR-CAA-0227.

⁶⁵ See OPR-CAA-0230.

⁶⁶ See OPR-CAA-0265.

⁶⁷ See OPR-CAA-0268 (July 25, 2002 email from Bruce Weinberg, Ohio EPA, to Genevieve Damico, U.S. EPA).

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filed a petition for review of U.S. EPA's May 22, 2002 letter.⁶⁸ In light of the pending litigation, U.S. EPA is not making any final findings on this issue in this report.

(5) Insignificant emission units

Preliminary Findings - 40 C.F.R. part 70 states that permitting authorities must require that all Title V applications include information necessary to determine if an insignificant emission unit is subject to an applicable requirement, and those requirements applicable to an insignificant emission unit must be included in the Title V permit. U.S. EPA has reviewed Ohio EPA's regulations for consistency with part 70 in this matter. Ohio requires sources to submit insignificant emission unit information in all Title V permit applications, but exempts from the federally enforceable side of the Title V permits applicable requirements to which insignificant emissions units are subject.

Final Findings - U.S. EPA issued a notice of deficiency (NOD) to Ohio on April 10, 2002, 67 Fed. Reg. 19175 (April 18, 2002), finding the Ohio Title V program deficient because Ohio's insignificant emission unit regulations are not consistent with Title V requirements.⁶⁹ Ohio EPA and two industry groups, the Ohio Chamber of Commerce and the Ohio Chemistry and Technology Council, filed petitions for review of the NOD in the United States Court of Appeals for the Sixth Circuit.⁷⁰ U.S. EPA need not initiate a withdrawal proceeding on this issue at this time because of the process outlined in the NOD and the pending litigation.

(6) Acid rain rule implementation

Preliminary Findings - Ohio EPA has not promulgated the NOx Phase II rules to complete the Acid Rain Program as part of its Title V operating permit program. The withdrawal criteria at

40 C.F.R. § 70.10(c)(1)(i)(A) refer to a permitting authority's failure to promulgate or enact new authorities when necessary.

Final Findings - After U.S. EPA issued the Draft Report, Ohio EPA promulgated the necessary rules for the required NOx program. On October 2, 2002, Ohio EPA submitted revised acid rain rules for U.S. EPA review and rulemaking action.⁷¹ U.S. EPA will review the rules and take

⁶⁸ See OPR-CAA-0227.

⁶⁹ See OPR-CAA-0225.

⁷⁰ See OPR-CAA-0228.

⁷¹ See OPR-CAA-0262.

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rulemaking action on them.

(7) Permitting Allegation #6: public participation under Title V

Preliminary Findings - Ohio EPA's Title V operating permit program allows regulated entities to submit Title V applications electronically. If an application contains confidential business information (CBI), for Ohio to meet Part 70 public notice requirements the applicant must submit a non-confidential version of the application for public review. Because Ohio EPA does not have non-confidential versions of some permit applications, Ohio EPA has not made these applications available for public review for over four years. The withdrawal criteria for Title V include failure to comply with the public participation requirements of 40 C.F.R. § 70.7(h) of the Title V regulations. 40 C.F.R. § 70.10(c)(1)(ii)(C).

Final Findings - Ohio EPA indicated in its comments on the Draft Report that it changed the application instructions to require an applicant to submit a non-confidential application with the CBI version.⁷² Ohio EPA will continue to provide the non-confidential applications for public review. In its comments, Ohio EPA also stated that to date it had received 103 Title V applications containing CBI, and only three of these applicants failed to submit a non-confidential version of the application. Ohio EPA stated that it is working with the remaining three entities to obtain a public version of the applications.

b. PSD

(1) Permitting Allegation # 2

Preliminary Findings - As to Permitting Allegation #2, U.S. EPA permitting reviewers did not identify any instances during the review of Ohio EPA files where Ohio EPA had improperly allowed a major source to commence construction without a PSD permit.⁷³

Final Findings - None of the information obtained during the public comment period caused U.S. EPA to amend its preliminary findings on this issue. The preliminary findings stand as the final findings.

⁷² See OPR-GEN-0042.

⁷³ Note that this finding is based on review of a select number of permit files at Ohio EPA offices as part of U.S. EPA's overall investigation of petitioners' permitting allegations. Permitting reviewers did not conduct a comprehensive investigation of whether Ohio EPA had improperly allowed major sources to commence construction without PSD permits because PSD violators are detected more effectively through inspections, compliance monitoring, and other enforcement activities than through the permitting review process. The permit files reviewed in U.S. EPA's investigation are identified in a May 31, 2001 document entitled "Final Administrative Record for Air Permitting Portion of the Ohio Petition Review." See OPR-CAA-0007.

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(2) Permitting Allegations #1 and 3: issues regarding PSD permitting

Preliminary Findings - In regard to Ohio EPA's overall process of and performance in issuing PSD and synthetic minor permits, which touch upon Permitting Allegations #1 and 3, Ohio EPA issued a number of both types of permits during the review period. To investigate these permitting allegations, U.S. EPA's examined its records of reviews of Ohio permit applications to determine Ohio EPA's past permitting performance under PSD. Over the five years prior to the Draft Report, U.S. EPA reviewed the majority of draft Ohio PSD permits and at least ten percent of the synthetic minor permits. During that time, U.S. EPA provided comments to Ohio whenever, upon review of a draft permit, the reviewer identified a concern with the draft permit. As a result of the investigation of its files and follow-up with the State, U.S. EPA preliminarily found that Ohio EPA was responding appropriately to U.S. EPA's comments, and was resolving U.S. EPA's concerns prior to issuance of the final PTI.

Final Findings - U.S. EPA's final findings remain the same as the preliminary findings discussed above.

(3) Lack of adequate documentation in permit files for draft synthetic minor and PSD permits

Preliminary Findings - During its review of Ohio EPA's PSD permitting files to investigate the petitioners' allegations, U.S. EPA found that for several files Ohio EPA did not maintain important supporting documentation, such as calculations for synthetic minor permits that support a facility's permitting claim or Ohio EPA's permitting decision. This, in turn, could delay U.S. EPA's review of these permits.

Final Findings - For purposes of aiding its oversight of Ohio EPA's PSD program, U.S. EPA continues to remain concerned that Ohio EPA maintain adequate documentation in permitting files to memorialize how it made permitting decisions. However, the issue of adequate documentation was not among the petitioners' allegations, and by itself, does not constitute evidence of failure to issue PSD permits in accordance with the requirements of the PSD SIP.

(4) Permitting Allegation #6: extension of time to comment on draft PSD permits

Preliminary Findings - At the time of the Ohio program review, Ohio EPA implemented and enforced a delegated federal PSD program. Under the federal regulations at 40 C.F.R. § 124.10, the public has 30 days to review and comment on draft permits. Under 40 C.F.R. § 124.13, U.S. EPA, and in this case its delegatee Ohio EPA, shall grant an extension of time for public comment if the commenter who requested additional time demonstrated the need for such time.

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The Sierra Club notified U.S. EPA of two instances where Ohio EPA failed to grant formal, written requests by citizens to extend the 30-day public comment period for PSD permits for a particular facility.

Final Findings - U.S. EPA has found no other instances where Ohio EPA failed to address a request for a comment period extension, nor was any information provided on this issue during the public comment period. Thus, based on the two identified instances alone, there is no basis to conclude that Ohio EPA is systemically failing to address comment period extension requests. Moreover, since issuing the Draft Report, U.S. EPA approved Ohio EPA's PSD SIP.⁷⁴ The Ohio PSD SIP does not require Ohio EPA to grant a request to extend the 30-day comment period. Since the SIP regulations do not require Ohio EPA to grant extensions of time for public comment, failure to grant such extensions would not denote an inadequacy in implementing the SIP. Nonetheless, U.S. EPA still finds that it is important for the public to have adequate time to review and comment on complex PSD permits, and requests that Ohio EPA use its discretionary authority to allow such extensions of time in appropriate circumstances.

(5) Permitting Allegation #6: administrative permit modifications

Preliminary Findings - U.S. EPA was concerned that Ohio EPA was modifying permits administratively without providing proper public notice and comment. U.S. EPA indicated that administrative modifications are appropriate for fixing typographical errors, but any substantive change to the terms of the permit, especially emission limits, must undergo public review and comment. The Ohio PSD SIP requires Ohio to follow its PTI regulations which contemplate a public notice and comment period for all permitting actions, including permit modifications. Ohio Administrative Code 3745-47-03, 3745-47-05(F), and 3745-31-09. U.S. EPA identified certain instances where Ohio EPA administratively modified permits to change substantive requirements in the permit.⁷⁵ These administrative modifications include, but are not limited to: replacement of compliance demonstration methods; elimination of permit limits; modification of emission factors; increase in capacity limits; elimination of permit limits; modification of operational restrictions; and addition of control devices and units. Failure to comply with notice

⁷⁴ See 68 Fed. Reg. 2909 (January 22, 2003).

⁷⁵ A list of 70 administratively modified permits which U.S. EPA was concerned changed substantive conditions without public comment is in a May 31, 2001 document entitled "Final Administrative Record for Air Permitting Portion of the Ohio Petition Review." See OPR-CAA-0007. This list was composed by reviewing U.S. EPA's database of Ohio EPA permits for administrative modifications which appeared to make substantive changes to permit conditions. At the time of the Draft Report, U.S. EPA assumed that all administrative modifications did not go through public comment. This assumption, combined with the large number of administrative modifications identified with apparent substantive changes to permit conditions, was the major reason for U.S. EPA's concern regarding administrative modifications. Since the publication of the Draft Report, it is now clear that Ohio EPA does not issue all administrative modifications without public comment.

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and comment requirements due to improper administrative modifications would violate the PSD regulations and 40 C.F.R. § 70.10(c)(1)(ii)(B), “repeated issuance of permits that do not conform with the requirements of Part 70,” and thus could be grounds for withdrawal.

Final Findings - Ohio EPA explained its PTI modification process in its October 22, 2001, comments.⁷⁶ Ohio EPA’s policy contemplates two tracks for modifying already-issued PTIs, depending on the type of modification involved. The two tracks are modified PTIs issued as “draft” or as “direct final” modifications. Draft permits receive a 30 day public comment period before being issued as final; direct final permits are issued final without a public comment period. In determining the need for public comment, Ohio EPA asks (1) whether the modification is administrative or non-administrative and (2) whether a public comment period is necessary. With regard to the second issue, facility requests which trigger the “modification” or “major modification” definitions are required to submit a new permit application, and Ohio EPA follows its policies for deciding if a draft permit is necessary (i.e., for all majors, synthetic minors, MACTs and controversial permits). If the “modification” or “major modification” definitions are not triggered, then the request is determined to be an administrative modification, which does not require a new permit application. Instead, the applicant submits information necessary for Ohio EPA to determine if the modification is necessary. Once Ohio EPA makes this determination, it decides whether to issue a draft permit or a direct final permit. Ohio EPA generally issues an administratively modified permit following the same process the original permit followed, i.e., if original permit was issued as a draft, then the administratively modified permit is issued as a draft. However, if the administrative modification just corrects typos or formatting errors, then Ohio EPA often modifies the permit without a public comment period. If the changes are insignificant or are not likely to interest the public, then Ohio EPA may issue the permit without public comment. These decisions are made on a case-by-case basis keeping in mind the importance of allowing the public the opportunity to comment, if it is likely they will want to comment.

On December 18, 2002, Ohio EPA sent a letter to U.S. EPA responding to the list of administrative modifications which U.S. EPA identified in the May 31, 2001, permitting administrative record document.⁷⁷ Upon review of the information in a table attached to the letter, U.S. EPA finds that many of the administrative modifications upon which Ohio EPA had information either went through public comment, or the changes involved were not substantive

⁷⁶ See OPR-GEN-0042.

⁷⁷ See OPR-CAA-0285.

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in nature.⁷⁸ U.S. EPA's review of this information, as well as review of Ohio EPA's administrative modification process as described in the October 22, 2001 comments, has shown that the lack of public participation in the administrative modification process is not as widespread as U.S. EPA previously assumed, and thus U.S. EPA's concerns regarding administrative modifications have reduced significantly. However, U.S. EPA continues to call upon Ohio EPA to ensure that it will not issue through its direct final process any administrative modifications of PTIs that involve substantive changes to permit conditions.

c. NSPS

Preliminary Findings - U.S. EPA permitting reviewers did not specifically review Ohio EPA permits for the adequacy of NSPS provisions. Traditionally, NSPS determinations are handled by air enforcement in Region 5. However, U.S. EPA sought information from Ohio EPA regarding NSPS determinations for 14 Title V permit applications, which, at the time of the Draft Report, Ohio EPA had not provided to U.S. EPA.⁷⁹

Final Findings - On October 15, 2001, Ohio EPA provided information on the 14 Title V sources which showed that these sources were not subject to NSPS. U.S. EPA permit reviewers thus have found no instances of Ohio EPA failing to include NSPS or NESHAP requirements in permits for sources already identified as subject to NSPS or NESHAPS.⁸⁰ Whether Ohio EPA is discovering NSPS or NESHAPS violators who do not identify themselves as subject to these requirements in the permitting process is discussed in the enforcement portion of this report.

d. NSR

Preliminary Findings - In its review of Ohio's NSR program for nonattainment areas, U.S. EPA

⁷⁸ Due to the age of the permitting decisions involved and limitations in Ohio EPA's permitting databases, Ohio EPA could only provide information on about half of the 70 administrative modifications U.S. EPA was originally concerned about. Of the permits upon which Ohio EPA had information, most of the permits appear either to have gone through public comment, or to involve truly minor changes. There were a few administrative modifications which appeared to relax limits, but these limits were still below major source levels. Two administrative modifications seemed to involve a netting exercise (14-4199 and 14-4511). 14-4511 also seemed to violate Ohio EPA's policy to public notice modifications to permits that were originally public noticed.

⁷⁹ As part of its investigation of the petitioners' allegations, U.S. EPA obtained a list of Ohio sources that were subject to NSPS or NESHAPs according to U.S. EPA's AIRS database. U.S. EPA compared this list with the sources' permits when conducting file reviews to determine whether Ohio EPA was listing the appropriate regulations in the sources' permits. Through this review, U.S. EPA identified 14 facilities listed as subject to the NSPS, that did not have NSPS requirements in their permits.

⁸⁰ See OPR-CAA-0264.

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did not find any areas of major concern in regard to permitting.

Final Findings - U.S. EPA received no additional information concerning issues with Ohio's NSR program for nonattainment areas. Since U.S. EPA issued the Draft Report, the United States Court of Appeals for the Sixth Circuit vacated the decision to redesignate the Cincinnati area to attainment for ozone. Comments submitted on behalf of the petitioners indicated that since the redesignation was vacated, U.S. EPA should conduct more review of Ohio's nonattainment NSR program. U.S. EPA has determined further review of Ohio EPA's nonattainment NSR permitting is not possible because Ohio EPA has not conducted any nonattainment NSR permitting activities since the redesignation was vacated.

2. Application of Factual Findings to Withdrawal Criteria for Each Program

a. *Title V*

Permit issuance rate, review of draft Title V permits issued by Ohio EPA, adequacy of statement of basis, insignificant emission units, acid rain implementation, public participation

Final Application to Withdrawal Criteria - U.S. EPA addressed some Title V issues in a NOD issued to Ohio EPA for inappropriately exempting insignificant emission units from part 70 requirements and for limiting prompt and six-month reports of deviations to those detected through compliance methods specified in Title V permits. U.S. EPA addressed a number of other Title V issues in a May 22, 2002 letter responding to citizen comments on Ohio EPA's part 70 program. Ohio EPA and two industry groups, the Ohio Chamber of Commerce and the Ohio Chemistry and Technology Council, filed petitions for review of the NOD in the United States

Court of Appeals for the Sixth Circuit. Ohio PIRG filed a petition for review of U.S. EPA's May 22, 2002 letter before the same court. Given the pending litigation, U.S. EPA is not making any final findings on these issues in this report.

b. *PSD*

PSD permitting, lack of adequate documentation in permit files for draft synthetic minor and PSD permits, extension of time to comment on draft PSD permits, administrative permit modifications

Final Application to Withdrawal Criteria - As noted above in the final findings section of this report as to air permitting allegations, Ohio EPA and U.S. EPA continue to resolve PSD permitting issues as they arise. Since Ohio EPA's PSD program is now approved as part of the

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SIP, our concern about extending the comment period for a PSD permit is no longer relevant to criteria for commencing revocation or withdrawal proceedings. Finally, Ohio EPA has shown that it public notices many administrative modifications under its PSD program. On these facts, U.S. EPA finds insufficient basis to initiate withdrawal proceedings.

c. *NSR*

Final Application to Withdrawal Criteria - As noted in the final findings section of this report, Ohio EPA currently has very few designated nonattainment areas. There have been a minimal number of proposed construction projects within those nonattainment areas that would be subject to nonattainment NSR. There is no basis for U.S. EPA to initiate withdrawal proceedings for this program.

3. Concerns Not Serious Enough to Provide a Basis for Initiating Withdrawal Proceedings or Otherwise Not Related to Withdrawal Criteria

Certain issues identified during review of Ohio's air permitting program are either not related to the withdrawal criteria, or if related, U.S. EPA's concerns are not serious enough to provide a basis for initiating withdrawal proceedings. U.S. EPA discussed these issues in the Draft Report, and provides final findings regarding these issues below.

a. *Credible Evidence Language*

Final Findings - U.S. EPA raised concerns regarding language included in Ohio Title V permits that could be construed to limit the use of credible evidence in enforcement actions. Ohio EPA took steps to address this problem by adding boilerplate language to its Title V permits stating that the permitting language in no way limits the lawful use of credible evidence to demonstrate violations of or compliance with applicable requirements. This addressed U.S. EPA's concerns.

b. *Application of Non-Approved SIP Provisions*

Final Findings - In certain draft Title V permits, Ohio EPA incorporated proposed SIP provisions into the federally enforceable side of the permit before U.S. EPA approved those provisions. This is an unacceptable practice, and is inconsistent with the Title V requirements. When notified of this practice on particular permits, Ohio EPA remedied the problem by removing the unapproved provisions from the federally enforceable section of Title V permits. This addressed U.S. EPA concerns.

c. *Failure to Issue State Operating Permits Prior to Title V Draft Permit Issuance*

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Final Findings - Prior to approval of Ohio's Title V program, Ohio's approved SIP required all sources to get a PTO. Ohio sources were required to submit Title V applications by October 1, 1996. During U.S. EPA's file review, the reviewers found various instances where sources did not have PTOs leading up to the October 1, 1996, Title V application deadline and no evidence of enforcement by Ohio EPA. No information was provided that changes U.S. EPA's preliminary finding that some sources lacked PTOs prior to filing Title V applications and Ohio EPA has not taken any enforcement action.

d. General Lack of Documentation

Final Findings - In the Draft Report, U.S. EPA stated that the Ohio EPA permit files U.S. EPA reviewed generally lacked documentation. Ohio EPA's effort to track emission and monitoring reports submitted pursuant to permit requirements is addressed under the findings for Enforcement Allegation #6: Verification of Accuracy of Statements Made by Regulated Entities, in the enforcement section of this report. The issue of whether there is sufficient technical documentation in permitting files is discussed in the findings for Lack of Adequate Documentation in Permit Files for Draft Synthetic Minor and PSD Permits in the permitting section of this report.

e. Training

Final Findings - U.S. EPA recommends that Ohio EPA move beyond its informal training process in an effort to foster consistency between the district and local offices in implementing CAA permitting programs. U.S. EPA notes that Ohio EPA's Title V program guidance documents, such as the engineering guides, help promote consistency. Ohio EPA has begun to develop and hold training for its staff (MACT training, NSR training) and continues to issue engineering guides as appropriate. We encourage Ohio EPA to continue to improve its training program.

f. Possible Undue Reliance on AP-42

Final Findings - U.S. EPA was concerned by Ohio EPA's apparent undue reliance on the AP-42 emission factors in permitting decisions. Ohio EPA's comments on the Draft Report clarify its policy on AP-42. "Our policy is to require the use of the best emission factor available. This means that the DO/LAA permit writer must research the factors available and make a judgement as to which factor is best."

The following list is what Ohio EPA considers "best" to "worse" emission factors:

1. Site-specific stack test information from identical emission units
2. Site-specific stack test information from similar emission units

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3. Mass balance calculations
4. Manufacturer's emission factors for the emission unit
5. Non-site specific stack test information from similar emissions units
6. Miscellaneous references material emission factors developed typically by industry groups
7. Facility supplied estimates
8. AP-42 type emission factors

U.S. EPA commends Ohio EPA for such a policy. We recommend that Ohio EPA document this policy and document the use of this policy in the supporting documentation for each permit.

g. *Communication About Hearings*

Final Findings - The federal regulations for the various air programs do not describe precisely how to inform the public of a public hearing, although 40 C.F.R. § 70.7(h) requires that Title V permitting authorities include the time and place of a hearing in notices of draft Title V permits and provide at least 30 days advance notice of a hearing. Regarding this provision, Ohio EPA's Title V program meets this legal requirement. Ohio EPA commented that its practice is to inform the party who requested a public hearing directly of a scheduled hearing. However, it is unclear whether Ohio EPA informs other interested entities of the hearings then. Due to the petitioners' concerns about public participation, U.S. EPA believes that Ohio EPA should pay special attention to informing directly interested parties of a hearing in a timely fashion, as well as providing all relevant documents, so that the public has the chance to prepare and ask questions prior to the hearing.

h. *Public Comments on Permits*

Final Findings - U.S. EPA was initially concerned that the public have access to relevant documents during the 30-day comment period. The PSD regulations, 40 C.F.R. § 124.13, and the Title V regulations, 40 C.F.R. § 70.7(h), allow for this notice and comment period. Regarding these provisions, Ohio EPA's PSD and Title V program meet the legal requirements. Ohio EPA commented that its district offices and local air agencies have procedures to ensure that public information requests are handled in an equitable and efficient manner. We encourage Ohio EPA to continue to ensure that its field offices implement these procedures and make documents available in a timely fashion to allow the public to take advantage of the full 30-day public comment period.

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Appendix: Ohio EPA's Air Program Commitments

Commitment	Due Date	Date Completed	Status and Comments
Acid rain submission		10/2/02	Ohio EPA submitted the acid rain rules for U.S. EPA approval.
Permit issuance rate (see March 15, 2002 letter)	9/1/03		Ohio EPA met its 6/1/02 and 1/1/03 milestones.

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Provide non-confidential Title V permit applications for public review			Ohio EPA updated its instructions to require applicants to submit non-confidential applications when they provide trade secret information and is working with three remaining applicants to obtain a public version of the application.
Implement an acceptable Compliance Monitoring Strategy (CMS) when selecting facilities for inspection and when conducting inspections (see FY 2003 105 grant workplan)	FY2003		U.S. EPA will review Ohio EPA's implementation of the CMS during U.S. EPA's end-of-the-year evaluation of Ohio EPA's performance.
Full compliance evaluations at every significant emissions unit at a Title V facility or non-registration emission unit at a synthetic minor facility (see FY 2003 105 grant workplan)	FY 2003		U.S. EPA will review Ohio EPA's compliance with this commitment during U.S. EPA's end-of-the-year evaluation of Ohio EPA's performance.
Inspection form and instructions (see letters of November 4th and 5th, 2002)			Ohio EPA committed to use in all its field offices new inspection forms and instructions. The instructions are still under development. Separate inspection guidance pertaining to PSD is under development.

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New electronic enforcement reporting system (see FY 2003 105 grant workplan)	FY 2003		Allows Ohio EPA to submit data directly to U.S. EPA's AFS compliance tracking system. U.S. EPA will review Ohio EPA's compliance with this commitment during U.S. EPA's end-of-the-year evaluation of Ohio EPA's performance.
Minimum training curriculum for new entry level employees (see March 19, 2002 e-mail from Rigo to MacDowell)			Ohio EPA sent a draft curriculum to its field offices for comment.
NSR permit writing basic and advanced training courses (see February 27, 2002 email)			Ohio EPA presented the basic course to 150 staff by October 2002. The advanced course is still under development.
Resume audits of field offices (See May 9, 2002 email)			Ohio EPA performed one audit by October 2002. Audits presently halted until Ohio EPA resolves disagreements with district offices on audit protocol.
Implement a procedure for tracking reports submitted by companies (see May 9, 2002 email)		July 2002	Ohio EPA required all field offices to implement, as of July 2002, electronic systems to track all "time-oriented" compliance reports submitted by companies.